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Public Hearing  
**STATE WATER RESOURCES CONTROL BOARD**  
STATE OF CALIFORNIA

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**Subject:** El Dorado Project Proposed by  
El Dorado County Water Agency and El Dorado Irrigation District,  
Applications 29919, 29920, 29921 and 29922,  
Petition for Partial Assignment of State Filed Application 5645

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Held in  
Bonderson Building  
Sacramento, California

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**Monday, October 30, 1995**  
**9:00 a.m.**

VOLUME III

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MONDAY, OCTOBER 30, 1995, 9:00 A.M.

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MR. STUBCHAER: We will reconvene the El Dorado Irrigation District Water Rights Hearing. Before we get to the cross-examination of the El Dorado panel on, I think it was Exhibit 96, we have some open objections to rule on. These were El Dorado's objections to portions of Fish and Game testimony.

10

The first objection concerned under what conditions El Dorado should be able to acquire PG&E's FERC 184 project. I'm going to sustain the objection. The State Water Board has no authority over the transfer or acquisition of FERC 184. Oral or written testimony concerning whether or not or under what conditions El Dorado should be able to acquire FERC 184 are not relevant to this proceeding.

17

Regarding the objection to testimony on the adequacy of CEQA documents as opposed to comments on project impacts, I am going to sustain that objection to the extent that the testimony addresses the adequacy or inadequacy of the Final EIR and Supplemental EIR prepared by El Dorado. However, I am going to accept for purposes of evaluating what impacts pending applications may have on the environment.

24

Regarding the objection to testimony concerning

1 environmental impacts that may occur along the route for  
2 conveying water to the place of use within the proposed place  
3 of use, that objection is overruled.

4 Under Water Code Section 1257, the Board is required  
5 to consider whether an application will best serve the public  
6 interest. When approving an application, the Board considers  
7 not only where, when, and in what quantities water will be  
8 diverted from the stream, but also where the water will be  
9 put to use and how the water will be delivered to the place  
10 of use.

11 The first order of business this morning will be  
12 cross-examination of the El Dorado panel on changes from the  
13 Draft EIR to the Final Supplemental EIR described last  
14 Thursday as, I believe, Exhibit 96, and cross-examination of  
15 El Dorado witnesses regarding that subject will be limited to  
16 the relevant matters pertaining to this water proceeding.  
17 Adequacy of the Final EIR is not an issue before the State  
18 Water Board.

19 Okay with that, Mr. Somach? Is your panel ready?

20 MR. SOMACH: Yes, we are.

21 MR. STUBCHAER: Could I have a show of hands of those  
22 parties who wish to cross-examine this panel on this subject.

23 MR. SOMACH: Could I also get some clarification?  
24 I'm afraid when I left on Friday I still wasn't certain

1 whether or not it was an either/or situation in terms of  
2 comments or cross-examination and that if comments were, in  
3 fact, filed, that they would be in the nature of argument or  
4 policy as opposed to evidence with respect to the document we  
5 are providing.

6 MR. STUBCHAER: It was not either/or, it was both.

7 MR. SOMACH: And the nature of what would be  
8 submitted, as I understand, the comments are not evidentiary  
9 in nature, they are comments. I mean, they are what they  
10 are.

11 MR. STUBCHAER: They are not evidence. They are not  
12 sworn testimony.

13 MR. SOMACH: Thank you. And that has to be done  
14 prior to the time of the closing brief or 20 days, I think.

15 MR. STUBCHAER: The same time limit as opposing  
16 briefs.

17 MR. SOMACH: There was one final, as long as we are -  
18 - I guess I shouldn't do all this housekeeping now, but the  
19 question that I had was whether or not the briefs were due 20  
20 days from the end of the actual hearing or whether it would  
21 be 20 days from the time that the transcript of the hearing  
22 was available?

23 MR. STUBCHAER: Mr. Taylor.

24 MR. TAYLOR: Mr. Stubchaer and I discussed this

1 question. At this point, I think our thoughts are that the  
2 briefs would not be due until 20 days after the transcript  
3 becomes available.

4 MR. SOMACH: Okay, that's fine. That was our  
5 preference, also.

6 MR. STUBCHAER: Mr. Taylor, are there any other  
7 housekeeping comments?

8 MR. TAYLOR: I don't believe so. I did have a phone  
9 call from Ms. Lennihan in which she indicated she might bring  
10 a matter to the Board's attention this morning. Is that the  
11 case?

12 MS. LENNIHAN: Mr. Stubchaer, I just wanted to ask --  
13 what Mr. Taylor is referring to is that we have been  
14 scheduling and rescheduling our lay witnesses, given the  
15 varying time that it's taken to move through the hearing, and  
16 I have a couple of lay witnesses who may have difficulty  
17 making the hearing, given that the Kirkwood case may not be  
18 put on for sometime. Specifically, I wanted to ask whether  
19 the Board would consider the question of whether or not any  
20 cross-examination was contemplated. A couple of these  
21 witnesses are coming from Kirkwood. It takes quite awhile to  
22 get down here. Their testimony is simply their written  
23 testimony, and we, of course, will make them available for  
24 cross-examination if this is necessary.

1           On the other hand, it seems like a long trip to make  
2 given they're not going to expand upon that testimony  
3 themselves.

4           MR. TAYLOR:     You're talking about all your lay  
5 witnesses, or just some?  Could you name the ones?

6           MS. LENNIHAN:   I could name them and I also would  
7 like to say there is one who's available only today and not  
8 tomorrow.  I can identify that person as well.

9           MR. SOMACH:     If I could just state that from El  
10 Dorado's perspective, we wouldn't have any cross-examination  
11 questions of the Kirkwood witnesses.

12          MR. STUBCHAER:  We will ask all the parties whether  
13 they would have any objections to Ms. Lennihan's request.  
14 Mr. Volker.

15          MR. VOLKER:     Mr. Stubchaer, the League to Save Sierra  
16 Lakes will have no questions for Kirkwood's witnesses and  
17 would be pleased to join in that stipulation and release them  
18 from the duty that otherwise would apply to them here.

19          MS. STUBCHAER:  Anyone else?

20          MR. TURNER:     If I may ask, Mr. Stubchaer, I  
21 understood it was mentioned last week, there's been some kind  
22 of an agreement entered into between the Associates and El  
23 Dorado Irrigation District; is that correct?

24          MS. LENNIHAN:   That's correct.

1           MR. TURNER:   And the witnesses are going to present  
2 details of this agreement, and is that, in fact, an issue  
3 that would be within the subject matter of the testimony that  
4 would be presented by these witnesses that will not be  
5 available, or will we be able to cross-examine on the details  
6 of that agreement?

7           MS. LENNIHAN:   In terms of the witnesses regarding  
8 which I am raising this question this morning, they are lay  
9 witnesses and you might try to cross-examine them, but you  
10 won't get anywhere because they have never seen the  
11 agreement, so I don't think you need to worry about that. We  
12 will be introducing exhibits regarding the settlement of both  
13 SMUD and El Dorado in our direct case. Therefore, you will  
14 have an opportunity to review those documents.

15           MR. TURNER:   And the witnesses that will be available  
16 will be able to respond to positive questions in connection  
17 with that agreement?

18           MS. LENNIHAN:   In a very limited, and I say that  
19 because the agreement has a lot of legal language that none  
20 of my witnesses are going to be able to respond to, and if  
21 you would like to talk to them separately, that certainly  
22 would be acceptable.

23           MR. TURNER:   In light of that, Mr. Stubchaer, I would  
24 not have any cross-examination to cover for these witnesses

1 that will not be available.

2 MR. GALLERY: Amador County would have no cross-  
3 examination, Mr. Stubchaer. I just want to make sure that  
4 Amador gets its witnesses on today if at all possible. One  
5 is a Supervisor and one is the Director of Public Works.  
6 You're not suggesting delaying our presentation?

7 MR. LENNIHAN: No, the schedule that has been laid  
8 forth by the Board staff and Mr. Stubchaer has Kirkwood  
9 Associates coming after Amador County, if I'm correct.  
10 Therefore, what I would do is, given the comments of the  
11 participants and yourself, is for those lay witnesses which  
12 can't be available, we will express our appreciation to  
13 everyone for allowing them. Those who will be available will  
14 be presented very briefly and that will allow the hearing to  
15 be expedited.

16 MR. STUBCHAER: Just a moment, we have one more  
17 party.

18 MR. BAIOCCHI: I need a clarification. Doesn't  
19 Kirkwood Associates propose to have expert witnesses such as  
20 engineers, environmental consultants, to testify before the  
21 Board concerning this application?

22 MS. LENNIHAN: Yes.

23 MR. BAIOCCHI: Thank you. I would prefer to cross-  
24 examine, Mr. Stubchaer.



1 Section III of the document, and in particular, I wanted to  
2 address Mr. Compton's question about operation of Sly Park  
3 Reservoir which appears at the end of each letter and is  
4 given the notation E-17, and then the response to that  
5 appears on page III-21 of the EIR.

6           The question that I had was what changes in operation  
7 of Sly Park Reservoir have been taken into account in the  
8 environmental review for this project?

9           Mr. Somach, I would be pleased to have the panel  
10 appoint one of the members to address it. I am not sure --

11           MR. SOMACH: Mr. Roberts will be the prime panelist  
12 to deal with the Final Supplemental EIR. I only, in terms of  
13 clarification and perhaps direction from the Board, would  
14 indicate that to the extent that questions are asked by any  
15 of the participants with respect to a comment letter and the  
16 response within the document to the comment letter, that in  
17 terms of the CEQA documentation the response is, in fact,  
18 the response. And I'm not sure what more beyond reading this  
19 response any one of the panelists can provide, but I just  
20 want as a preliminary matter to indicate that this is one of  
21 the unusual things about having people cross-examine about a  
22 Final Supplement to an EIR with respect to comments, but Mr.  
23 Roberts will be our primary responder and I hope that you  
24 will understand that beyond focusing on these comments or the

1 comments in the document, that were certified by the Board of  
2 Supervisors and the Board of Directors of EID, there's a  
3 limit to how far one can go.

4           Mr. Roberts,     You are the person that responds to  
5 Mr. Volker's questions, and I think he perhaps has further  
6 amplification on the questions he posed.

7           Go ahead, Mr. Roberts.

8           MR. ROBERTS:    A   First, I would like to comment that  
9 Mr. Compton -- this is not a question that Mr. Compton raised  
10 in his letter.   It was a recommendation that he made as a  
11 footnote or postscript to his letter, either footnote or  
12 postscript.   Item C, the one to which you are referring, is a  
13 plan to provide additional new water by enlarging Sly Park  
14 and so on.   The response, and I stand by the response, is that  
15 the recommendation is noted.

16           However, there are no plans, the "however" is  
17 inserted.   There are no plans to enlarge Sly Park Reservoir,  
18 which is a U. S. Bureau of Reclamation facility and that is,  
19 in fact, what we considered in our analysis for the  
20 preparation of the Draft Supplement.

21           MR. VOLKER:    Q   Let me ask you some follow-up  
22 questions.   Is it true that the minimum pool at Sly Park  
23 Reservoir has been adjusted downward in the last year?

24 A           I cannot comment on that.   I do not know.

1 Q Mr. Alcott, are you familiar with that change? Can  
2 you address that?

3 MR. ALCOTT: A Your question is whether or not  
4 minimum pool of Sly Park has been reduced?

5 Q Right.

6 A And as a physical matter, no. The minimum pool of  
7 Sly Park is not changed. I believe the minimum pool is about  
8 400 acre-feet.

9 Q Four hundred acre-feet?

10 A Yes.

11 Q Mr. Alcott, are you familiar with any changes in the  
12 manner in which the Bureau of Reclamation operates Sly Park  
13 Dam that have taken place since the previous EIR was  
14 prepared?

15 A No, the Bureau of Reclamation does not operate the  
16 Sly Park Reservoir or Dam. That is the responsibility of El  
17 Dorado Irrigation District.

18 Q Are you familiar with any changes in the contractual  
19 arrangements between EID and the Bureau for operation of Sly  
20 Park that have taken place in the last three years?

21 A The District is now operating under a three-year  
22 contract with the Bureau. I do not recall any meaningful  
23 changes in project operations as a result of that three-year  
24 agreement, so the answer would be no.

1 Q           Is it true that in past years, the available capacity  
2 of that reservoir for storage of water to be distributed to  
3 EID has been a function of the Bureau's commitments to other  
4 customers and the environmental constraints that apply to  
5 Bureau operations statewide to provide water for Bay-Delta  
6 purposes and so forth.

7 A           For Sly Park, as I mentioned, it isn't operated by  
8 the Bureau and the only customers deriving water from Sly  
9 Park is EID. That is, in fact, why we have the responsibility  
10 of operating it. There have been no changes in its operation  
11 over the past number of years.

12 Q           And do you have any information that as a Bureau-  
13 owned facility, Sly Park is subject to release requirements  
14 to protect Bay-Delta fish and wildlife?

15 A           There are release requirements for Sly Park for fish  
16 and wildlife. I know that to be true. I do not know if  
17 those requirements were designed in part with Bay-Delta in  
18 mind or whether or not it was for fish and wildlife impacts  
19 further upstream.

20 Q           What are those requirements?

21 A           It has to do with a certain, I don't recall the  
22 number, of second-feet of water that's required not to be  
23 diverted into Sly Park, and instead be allowed to run into  
24 the creek and downstream.

1 Q That is into Clear Creek and into the North Fork of  
2 the Consumnes?

3 A Yes, I believe it is.

4 Q And Consumnes is a tributary of the Bay-Delta  
5 ecosystem?

6 A Yes, it is.

7 Q Has El Dorado evaluated the potential impact on Sly  
8 Park Reservoir's operation due to the adoption on December 14  
9 last year of the EPA freshwater flow requirement for the Bay-  
10 Delta?

11 A I'm sorry, I missed the first part of the question.

12 Q Do you know if El Dorado Irrigation District or El  
13 Dorado County Water Agency has taken into account in its  
14 application and supporting materials the adoption by EPA of  
15 water quality standards for Bay-Delta fish and wildlife last  
16 year?

17 A Not to my knowledge.

18 Q Has El Dorado Irrigation District or El Dorado County  
19 Water Agency taken into account in the preparation of its  
20 application and supporting documentation the State Water  
21 Board adoption on May 22 of this year of a new Bay-Delta  
22 Water Quality Plan that contains flow projections for fish  
23 and wildlife?

24 MR. SOMACH: Objection. This whole line of

1 questioning is well out of the scope of what was supposedly  
2 the limited scope of the cross-examination in the first  
3 place, and I haven't objected to this point, but these  
4 questions, however, now are not only outside of the scope but  
5 have only marginal relevance, since I am not aware of any  
6 water right order anywhere which imposes upon anybody the  
7 obligation to meet either the EPA standards or even the State  
8 Board standards. My understanding is that that process is a  
9 process that is in its beginning stages of implementation, so  
10 on both bases, I object to this line of questioning.

11 MR. STUBCHAER: Mr. Volker.

12 MR. VOLKER: After this question is answered, I will  
13 move on to questions that are more specifically directed to  
14 information in the Final Supplemental EIR.

15 MR. STUBCHAER: All right. I tend to go along with  
16 your objection, but since you are going to move on, we will  
17 permit this answer.

18 A Not to my knowledge.

19 MR. VOLKER: Q Thank you. I notice that in Tables  
20 7.3 and 7.6 that follow the El Dorado response to Mr.  
21 Compton's comment letter, that additional information is  
22 provided with respect to the amount of water that is  
23 anticipated from sources to the east service area,  
24 information that was not presented in the Draft Supplement to

1 the EIR and I have some questions about that. Mr. Roberts,  
2 would you be the appropriate person to direct these  
3 questions?

4 MR. ROBERTS: A I don't believe so because these  
5 are extracted from Exhibit 78-A, which are the famous  
6 hydrologic tables, and I am not a hydrologist.

7 Q Well, if there is someone on the panel these  
8 questions can be put to --

9 MR. SOMACH: They have been addressed. We had a  
10 hydrologist here for two days addressing them on two  
11 occasions, Exhibit 78 and everything that was in it. I mean,  
12 to the extent that everything in the environmental documents  
13 also were part and parcel of our case in chief, doesn't mean,  
14 I don't believe, that everybody is open for a third cross-  
15 examination. I mean, there was a great deal of discussion  
16 over Exhibit 78 during the last two days of hearing. I  
17 object to the question as being, again, outside of the proper  
18 scope of what was supposed to be limited cross-examination.

19 MR. STUBCHAER: Mr. Volker, Do you see any change in  
20 Table 78?

21 MR. VOLKER: My recollection is that some of the  
22 information in those tables has changed, but let me move to  
23 the core question. And that is when Mr. Hannaford was  
24 testifying he explained that in contrast to past operations,

1 at present El Dorado has full operational control over Sly  
2 Park Reservoir, suggesting a change in operation. I wanted  
3 to know whether there was going to be a change in operation  
4 and if so, was it reflected in this table or elsewhere in the  
5 document?

6 MR. STUBCHAER: Didn't you ask that question  
7 presently?

8 MR. VOLKER: No, I don't believe so.

9 MR. SOMACH: Did you say did he ask, or could he have  
10 asked?

11 MR. STUBCHAER: During the previous discussion on Sly  
12 Park Reservoir, I wondered if that question was asked.

13 MR. SOMACH: It was certainly implied in the  
14 question, but fundamentally, it could have been asked over  
15 the two days where we focused on Exhibit 78 itself.

16 MR. STUBCHAER: I would say if the panel members can  
17 answer the question, go ahead and answer it.

18 MR. ALCOTT: A Mr. Volker, let me see if I can track  
19 this. You suggested that in the reports Mr. Hannaford has  
20 indicated that the District would have full operational  
21 control of Sly Park and would be able to achieve these  
22 demands, and that that represents or implies a change in the  
23 operations, and consequently, is that change in operation  
24 reflected in the document?

1 MR. VOLKER: Q Yes.

2 A And I believe the answer is no. However, in order to  
3 make that better understood, Sly Park is the Bureau facility  
4 for which El Dorado Irrigation District has contractual  
5 rights and responsibility. Most notably, we are the sole  
6 recipient of water generated by Sly Park and we are the sole  
7 proprietor of the project. The lake itself holds about  
8 41,000 acre-feet for which there is a contract yield, maximum  
9 yield of 23,000 acre-feet.

10 The District routinely operates Sly Park in a fashion  
11 that it generates anywhere from 15 to 18 thousand acre-feet  
12 per year, well below its capacity and certainly below its  
13 contract annual yield. In effect, Sly Park represents a two-  
14 year project. Its operations are designed on a two-year  
15 demand basis, unlike Project 184, which is generally, as we  
16 talked about earlier, a one-year project.

17 Sly Park is the principle storage available to the  
18 District. The other sources of supply are obviously the  
19 Forebay, our 1919 contract water and to a very small extent  
20 Crawford Ditch and Reservoir 7 production and Folsom Lake,  
21 there is no contemplated change in operations, inasmuch as  
22 operations change year to year depending on the amount of  
23 water available at every individual source of supply, and  
24 consequently the table you are referring to simply represents

1 a point in time, and in this case 2,013 showing the 2,013  
2 demand and showing how the EID water supply projects would be  
3 operated in a year similar to 1975 as representing an  
4 average. I hope that answers your question.

5 Q Well, that's very helpful. What is the firm annual  
6 yield from Sly Park at present?

7 A As I mentioned, we have four sources of supply and in  
8 order to calculate our firm supply we don't calculate the  
9 individual yields out of the four individual projects.  
10 Instead, we have modeled the system with four independent  
11 sources operated conjunctively and consequently we operate  
12 under what we call a system firm yield and that system firm  
13 yield based on a 95-percent reliability, is a number that I  
14 can't quote off the top of my head.

15 Q I recall seeing a figure of 18,500, approximately, as  
16 a firm yield estimate by El Dorado. Does that sound familiar  
17 to you?

18 A If you were to take Sly Park as an individual source,  
19 yes, somewhere around 18,000 acre-feet would be the firm  
20 yield.

21 Q And you mentioned other sources being the Forebay.  
22 That's about 400 acre-feet at most.

23 A The Forebay has a capacity of 400. Of course, the  
24 annual supply through the Forebay is 1580.

1 Q           There is a storage of 400 acre-feet?

2 A           Just so the audience isn't confused, 400 acre-feet at  
3 the Forebay is simply regulated storage, water that is stored  
4 and re-regulated, water taken from direct diversion when  
5 water is available in the river and the water from the lakes  
6 we are talking about.

7 Q           And you mentioned Crawford Ditch.   That's in the  
8 range of 500 acre-feet annually?

9 A           500 to 1500 depending upon the season, yes.

10 Q          And is there a legal dispute about El Dorado  
11 Irrigation District's entitlement to that 500 acre-feet from  
12 the Crawford Ditch?

13 A          There is a dispute, yes.

14 Q          And is it true that the Administrative Draft General  
15 Plan states that the firm yield from Crawford is 0 acre-feet  
16 because of that pending suit?

17           MR. SOMACH:  Objection.

18           MR. STUBCHAER:  Mr. Volker, where in the Supplement  
19 EIR are you referring to on these questions?

20           MR. VOLKER:  Well, I noticed that the Draft, Mr.  
21 Stubchaer, does not have information for the sources.  If you  
22 look at Table 7.6 for the year 2013, the monthly information  
23 is not provided, suggesting that there was some uncertainty  
24 or

1 lack of information regarding operations, whereas in the  
2 final, the same table has about two to three times more  
3 numbers.

4 MR. STUBCHAER: All right.

5 MR. VOLKER: Suggesting that there was some  
6 additional information that came to light, or an additional  
7 analysis that was performed that allowed EID to provide a  
8 more complete picture of operations, and I am just trying to  
9 get my arms around what additional information or additional  
10 analysis may have come to light or been constructed that  
11 would allow EID to provide this additional information, and  
12 Mr. Alcott has explained some of the general parameters, and  
13 I am trying to gain a better understanding of that.

14 MR. STUBCHAER: What was the basis of that?

15 MR. SOMACH: The proper question is, the difference  
16 between the two tables and how did you get there. This  
17 peripheral questioning is not relevant. It is not focused on  
18 those two tables. Now that we understand the proper focus,  
19 Mr. Roberts, do you care to respond?

20 MR. ROBERTS: Q Yes. The Draft Supplement did not  
21 have the monthly numbers in it and we went back as a part of  
22 our review and asked for the monthly numbers and it was  
23 simply, if you will note columns on the right-hand side,  
24 which are the totals, we ask the question, well, if we have

1 the totals, what is the breakdown of those, and we went back  
2 and asked for the monthly numbers that were used to calculate  
3 the total, and we were provided that and that's what is shown  
4 on Table III and Table VI, and the reason we attached them to  
5 the response to comments was that in fact, we went back and  
6 asked for the numbers.

7 MR. VOLKER: Q Is anyone on the panel familiar with  
8 the manner in which that monthly operational information was  
9 gathered and evaluated?

10 MR. ROBERTS: I do not, how the analysts prepared the  
11 month-to-month numbers. How we wrote the document between  
12 the differences, we went back to the people, Sierra  
13 Hydrotech, and asked, may we have the numbers you used for  
14 the monthly, and he said, yes, we have the table. The  
15 totals are the same. We simply asked, how did you arrive at  
16 those totals, and they said, we will give you the tables that  
17 give you the details. That's the last two pages of the Draft  
18 of the Responses to Comments.

19 Q Mr. Roberts, did the staff who prepared those tables  
20 employ a computer model to simulate water utilization  
21 in a 1977-type year?

22 A I don't believe that question was asked to Mr.  
23 Hannaford previously, and my understanding from his comments  
24 was yes.

1 Q           Is it your understanding that the new information  
2 that appeared in the final supplement to the EIR was based on  
3 the same --

4 A           I'm sorry, I was looking at the '75 year. I don't  
5 know on the '77 year.

6           MR. SOMACH: And again, for the record, I want the  
7 record to reflect the fact that what we're talking about are  
8 charts that were taken out of El Dorado County Water Agency  
9 Exhibit 78, and that these were charts and documents that  
10 were the subject of cross-examination before and that to the  
11 extent that Mr. Volker has any questions, he could have asked  
12 all these questions of Mr. Hannaford when he was here; and in  
13 fact, did ask a lot of questions of Mr. Hannaford when he was  
14 here about the information on these tables.

15           MR. STUBCHAER: Just to be clear, the tables on which  
16 cross-examination took place have the monthly values in them;  
17 as I recall?

18           MR. VOLKER: Yes. The reason why I believe the  
19 cross-examination is appropriate is that for reasons best  
20 known to the applicant, the applicant chose not to include  
21 this information in the Draft Supplement. In preparation of  
22 the Final, apparently it did respond to questions that asked  
23 about Sly Park reauthorization, and I think my question is  
24 proper to inquire as to the extent to which consideration of

1 reoperation of Sly Park influenced the process of providing  
2 in the Final this detailed month-by-month operation  
3 information.

4           MR. SOMACH: But, if I could, the questions, in a  
5 sense to the extent that they focus on the difference between  
6 the Draft and the Final, as they are articulated here, argue  
7 toward the CEQA process as opposed to the factual substance  
8 of what's in the exhibits; that the sufficiency or  
9 insufficiency of the environmental documentation, I thought,  
10 was not a part of the State Board's process.

11           To the extent that there have been questions that  
12 focused on Exhibit 78-a and 78-b, which are also a part of  
13 Exhibit 78 that are substantive questions, factual questions  
14 about what's in those documents, those have been fully  
15 explained and examined.

16           The only purpose for the examination now would be to  
17 attempt to argue that somehow the inclusion or exclusion  
18 between the Draft and the final was inappropriate. The only  
19 proper questions would be, tell me what the chart says,  
20 explain to me the charts, and that was the subject of  
21 specific cross-examination before.

22           So, I object to the continued questioning on these  
23 matters that have already been the subject of a great deal of  
24 cross-examination.

1           MR. STUBCHAER: I did not take the questions as  
2 challenging the validity of the EIR. I took them as trying  
3 to get more information on these tables. However, I think  
4 the fact that they were cross-examined during the previous  
5 testimony, the direct testimony is telling. Mr. Taylor?

6           MR. TAYLOR: I am having difficulty understanding  
7 what the relevance of this line of questioning is to the  
8 issues before the Board in considering El Dorado's  
9 application.

10           Perhaps if we had an answer to that question, we  
11 would have a better sense of how to respond to the objection.

12           MR. VOLKER: I think a key question respecting the  
13 viability of the operational scheme is one, can historic  
14 operations be replicated in the future. How are we provided  
15 insurance that that is true, and also what is the  
16 availability of Sly Park storage as a safety net when demands  
17 exceed supply?

18           Mr. Hannaford explained previously that his modeling  
19 made use of alternate storage, for example, the carry-over  
20 storage from June to July in Folsom when supply did not meet  
21 demand.

22           Mention also was made of Sly Park as an available  
23 safety net to provide additional storage.

24           It is my understanding that Sly Park has been used by

1 El Dorado Irrigation District in the past efficiently in the  
2 sense that it has used the available storage there for  
3 existing uses, and that because that storage is already  
4 dedicated to existing uses, that the availability of Sly Park  
5 as a safety net is only true to the extent there is an  
6 additional increment of storage capacity available in Sly  
7 Park.

8           That raises questions. What is the minimum pool? Has  
9 that been changed? My understanding is, according to present  
10 accounts, yes, the operation in Sly Park has been adjusted,  
11 and I want to follow up because maybe there is some confusion  
12 in the question and answer sequence. Another question would  
13 have to do, is there now a different arrangement with the  
14 Bureau that permits greater flexibility in the operation of  
15 Sly Park.

16           Mr. Hannaford explained that there had been an  
17 apparent change so that now Sly Park was under the full  
18 operational control of El Dorado Irrigation District. So, I  
19 think these are appropriate questions to understand what this  
20 table means when it says that in a 1977-type dry year, El  
21 Dorado County Irrigation District predicts that Sly Park will  
22 produce a given quantity of water in a given month.

23           MR. TAYLOR: Unless the SEIR specifically addresses  
24 these kinds of things, it seems to me all you are really

1 doing is conducting additional cross-examination on the  
2 hydrology of that testimony and it is my understanding, and  
3 please feel free to correct me, that the SEIR does not  
4 address these kinds of questions.

5 MR. STUBCHAER: I would say the mere inclusion of the  
6 monthly breakdown doesn't change the annual total, so I am  
7 going to sustain the objection.

8 MR. VOLKER: Q May I ask for clarification with  
9 respect to changes in the operational minimum pool at Sly  
10 Park? Mr. Alcott, you testified previously the minimum pool  
11 at Sly Park has not changed, that it was 400 acre-feet. Were  
12 you addressing the physical minimum pool rather than the  
13 operational minimum pool?

14 A I so stated in my answer, yes.

15 Q What changes, if any, have taken place in the  
16 operational minimum pool?

17 MR. SOMACH: Again, objection on the same basis as  
18 before. This is all information that was provided as part of  
19 the Exhibit 78 in addition to 78-A and B. These questions  
20 are clearly coming from an inquiry to those exhibits and they  
21 have been the subject of two sessions of cross-examination.  
22 Mr. Hannaford was here to explain in detail the development  
23 of those charts.

24 MR. STUBCHAER: Objection sustained.

1 MR. VOLKER: I have no further questions.

2 MR. STUBCHAER: Mr. Gipsman.

3 MR. GIPSMAN: No questions.

4 MR. STUBCHAER: Ms. Lennihan.

5 MS. LENNIHAN: No questions.

6 MR. STUBCHAER: Mr. Gallery.

7 MR. GALLERY: Mr. Chairman, I only had a couple of  
8 questions with regard to Mr. Hannaford's Silver Lake seepage  
9 material, and he is not here this morning, so they really  
10 were to clarify a couple of items and it probably isn't  
11 important enough to try to get him back here, so I have no  
12 questions.

13 MR. STUBCHAER: All right, Mr. Gallery. Anyone else  
14 wish to cross-examine? Mr. Birmingham.

15 **CROSS-EXAMINATION**

16 BY MR. BIRMINGHAM:

17 Q These questions will be directed to the panel in  
18 general, so any member of the panel who would like to respond  
19 to them is welcome to do so.

20 There's recorded comments from Metropolitan Water  
21 District on page 4 of Section II. Are you able to find the  
22 comments of Metropolitan Water District?

23 MR. ROBERTS: A Yes.

24 Q That is on page 4 --

1 A           They were not comments.    It was a quotation of  
2 comments of the Metropolitan Water District.

3 Q           On the bottom of that page 4 of Section II of the  
4 comments of Metropolitan Water District, quoting the comments  
5 of Metropolitan Water District, of Exhibit 96-B, it states as  
6 stated earlier, Metropolitan Water Planning in its 11-30-92  
7 comments on the DEIR accused the consultants of, in general,  
8 failing to undertake the detailed studies (diversion timing,  
9 varying year types, months, seasonal flow studies, varying  
10 Folsom reservation operational scenarios) necessary to  
11 support the conclusion that a 17,000-acre-foot annual  
12 withdrawal would not have a significant impact on the Folsom  
13 Reservoir Lower American River-Delta system.    Will a  
14 consultant please explain why he chose not to do the studies?

15           Did I read that accurately?

16 A           Yes.

17 Q           The response to that comment is contained in Section  
18 III, page 22; is that correct?

19 A           Yes.

20 Q           It states,    see pages 6-44 to 6-48 of the Final EIR  
21 for the explanation of why certain quantitative studies were  
22 not undertaken.    The objective of the Draft Supplement was to  
23 assess the environmental impacts resulting from changes made  
24 to the previously analyzed alternative.    There were no

1 changes that would require conducting detailed studies.

2           Is that correct?

3 A           That is not the complete sentence. It goes on --  
4 yes, what you have read is correct.

5 Q           It was a complete sentence. It was not the complete  
6 paragraph; is that correct?

7 A           Correct.

8 Q           Now, looking back at 6-44 and 6-48 of the Final EIR,  
9 it appears, doesn't it, that the analysis conducted there  
10 involved an analysis of annual averages; is that right?

11 A          I do not have that document in front of me. The  
12 document to which you referred in response to comments is,  
13 see pages 6-44 and 6-48 of the Final EIR of the previous  
14 submittal. I do not have it in front of me.

15 Q          Well, I will ask you to assume it did involve an  
16 analysis of annual averages, because the document will speak  
17 for itself. Isn't it correct that the impacts that vary from  
18 week to week or even day to day -- let me restate the  
19 question. Isn't it correct that the potential environmental  
20 impacts could vary from week to week or even from day to day?

21 A          I'm not sure I understand the question.

22 Q          Isn't it correct that the environmental impacts of  
23 this proposed project could vary from week to week so that  
24 during an analysis of annual averages would not present a

1 full picture of the potential environmental impacts.

2 MR. SOMACH: Mr. Roberts, would it be at all helpful  
3 to have the final EIR in front of you?

4 A Yes.

5 MR. SOMACH: Do we have a copy -- we have a copy.  
6 I'm not going to point out the fact these comments were in  
7 the Final Environmental Impact Report that was done for 1993,  
8 but to the extent that it's cross-referenced, I guess at  
9 least we should have them in front of us.

10 And the other thing I would like to do is clarify for  
11 the record the entity that wrote the original letter. It was  
12 the Sacramento/City/County Office of Metropolitan Water  
13 Planning.

14 MR. BIRMINGHAM: Thank you very much, Mr. Somach, for  
15 the clarification.

16 A Yes.

17 MR. BIRMINGHAM: Q Now, my question is, isn't it  
18 correct that the potential environmental impacts of this  
19 project could vary from week to week?

20 A Yes. However, if I may, the project review was based  
21 on Folsom operations, of which we did not have control, so we  
22 assumed, we used the response to the previous document as a  
23 basis for the response in this document.

24 MR. ALCOTT: A I didn't fully understand your

1 question, but it may be worth saying that one of the  
2 complications associated with evaluating the impacts  
3 downstream of our withdrawals is the fact that none of this  
4 is accurately measured at this point. It is difficult to  
5 measure on a monthly basis and to have a measure on a daily  
6 or hourly basis, I think, from a technical standpoint would  
7 be literally impossible, and given the relative size of our  
8 diversion, particularly as a maximum hour rate, I think it is  
9 beyond human science to measure in an accurate fashion.

10 Q I would like you to look at page 6-48, the last page  
11 that was cross-referenced in that portion of Exhibit 96-B  
12 that we are talking about. It says in the first paragraph,  
13 not full paragraph, of page 6-48, the second to the last  
14 sentence says, thus even under the less favorable conditions,  
15 using conservative assumptions, the largest decreases would  
16 still be a small percentage of total outflow. In practice,  
17 the storage capacity of the reservoir could be used to  
18 distribute the monthly decreases in outflow more uniformly.  
19 Did I read that accurately?

20 A Yes.

21 Q Now, last week, when we were able to elicit that that  
22 project that El Dorado is proposing does not include storage  
23 capacity in Folsom Reservoir, you were present at that  
24 testimony?

1           MR. ROBERTS:  A  I believe so, yes.

2  Q           Does the Final Supplement identify measures other  
3  than the use of the storage capacity at Folsom Reservoir as a  
4  means of distributing monthly decreases in outflow more  
5  uniformly?

6  A           It is extremely difficult to answer because that is a  
7  complex, a number of questions.  If you were asking just about  
8  the storage -- may I respond to the storage question?  
9  Because you added those to which I cannot respond about the  
10 difference between daily or weekly and so on.  My response to  
11 the comment related to the storage is on page 3-21, Response  
12 E-16.  My understanding from review of the project and  
13 working with the hydrographers was as follows:  No Folsom  
14 storage will be required for the project.  However, the U. S.  
15 Bureau of Reclamation will likely require a Warren Act  
16 contract for the use of the facility.  The need for  
17 additional pumping and treatment facilities is acknowledged,  
18 and has been included in the environmental review.

19           That is the full response to E-16.  That was our  
20 response related to storage.

21  Q           Dr. Roberts, my question relates to potential  
22 environmental impacts, particularly with respect to flows in  
23 the lower part of the American River and the Delta.  The  
24 portion of the Final EIR referenced in that portion of

1 Exhibit 96-B, which we have been discussing, states that, in  
2 practice the storage capacity of the reservoir could be used  
3 to distribute the monthly decreases in outflow more  
4 uniformly, and the specific question that I'm asking is, does  
5 the Final Supplement identify measures other than the use of  
6 storage capacity at Folsom Reservoir as a means of  
7 distributing monthly decreases in outflow more uniformly?

8 A No.

9 MR. BIRMINGHAM: I have no further questions.

10 MR. STUBCHAER: Mr. Baiocchi.

11 MR. BAIOCCHI: Good morning, Mr. Chairman, staff,  
12 Alice, and also El Dorado witnesses.

13 MR. ALCOTT: Good morning, Mr. Baiocchi.

14 MR. BAIOCCHI: I have a few questions. First of all,  
15 Mr. Stubchaer, I was building a foundation when I first  
16 cross-examined the witnesses concerning cumulative impacts to  
17 the Lower American River because of the application, so I am  
18 going to go a little further with it.

19 I had the opportunity this weekend to review this, as  
20 you told me to do, which I did, the Draft and the Final.

21 MR. STUBCHAER: And the Final?

22 MR. BAIOCCHI: Yes.

23 **CROSS-EXAMINATION**

24 BY MR. BAIOCCHI:

1 Q For the record, Dr. Roberts, in both documents, both  
2 the Draft and the Final Supplement, did you evaluate the  
3 impacts to the Westlands Water District and other water users  
4 south of the Delta from taking 17,000 acre-feet of water out  
5 of the Folsom Reservoir?

6 MR. ROBERTS: A Because the project, the 1-B project  
7 was no different from the 1-A, we did not specifically  
8 evaluate that.

9 Q So, based on that answer, I may be incorrect when I  
10 say this, if there was a 4.4 million dollar gross impact, you  
11 did not evaluate that?

12 A I'm sorry, I don't understand the question.

13 Q If, in fact, the 17,000 acre-feet of water that would  
14 be taken out of the Folsom Reservoir was not to flow down the  
15 American River, not to flow into the Bay-Delta, and not to  
16 flow out of the Delta for consumptive uses, and if, in fact,  
17 that impact was 4.4 million dollars, did you evaluate the  
18 impacts to the gross farm income?

19 MR. SOMACH: Objection. The question includes within  
20 it a hypothetical for which no facts have been introduced  
21 into the record, at least at this point.

22 MR. BAIOCCHI: Mr. Chairman, there will be testimony  
23 relating to that. I was just attempting to find out by  
24 cross-examining Dr. Roberts if, in fact, he did evaluate

1 that. Would I have the opportunity after Westlands puts on  
2 their testimony to come back and cross-examine Dr. Roberts so  
3 I can get that into the record?

4 MR. STUBCHAER: Not necessarily. You could ask a  
5 question did they evaluate the economic impacts rather than  
6 using a specific amount. There is no evidence on the 4  
7 million dollars, a specific amount, or how much of the 17,000  
8 would be Delta outflow, how much would be diverted, so you  
9 could ask if they evaluated economic impacts in the export  
10 area if you want.

11 MR. BAIOCCHI: Q Thank you. Did you evaluate the  
12 economic impacts to ag users south of the Delta from  
13 extraction of the 17,000 acre-feet of water out of Folsom by  
14 El Dorado?

15 A No.

16 Q Thank you. I want to move to the Draft Supplemental.  
17 Now, the foundation that I was attempting to build was not  
18 only cumulative, but was on the lakes and recreation uses up  
19 there, as you may recall, and stream flow requirements and  
20 all that.

21 Now, I refer you, Mr. Stubchaer, to Appendix C,  
22 amended rights application. It is in the Draft.

23 MR. STUBCHAER: I don't have the Draft.

24 MR. BAIOCCHI: Well, I can go on if you would like.

1           MR. STUBCHAER:    Just a moment.    Yes, I do.    Which  
2 page, Mr. Baiocchi?

3           MR. BAIOCCHI:    Well, it would be Appendix C, but  
4 unfortunately, the pages are not numbered, so I will do the  
5 best job I can.    I will go to the second application and it's  
6 Caples Lake, the water source on page 1 of the application.

7           MR. STUBCHAER:    All right.    Is there a tie between  
8 this and the Final?

9           MR. BAIOCCHI:    There is a tie -- I'm scratching my  
10 head and perhaps it can be dealt with very easily.    I would  
11 like to cross-examine Stuart Somach.

12          MR. STUBCHAER:    Well, he is not a sworn witness.    You  
13 can ask him questions.

14          MR. BAIOCCHI:    I realize that, but he signed the  
15 document.    Since he signed the document, who is going to  
16 testify --

17          MR. SOMACH:    You can ask Mr. De Haas or Mr. Alcott.  
18 I signed as an agent in their place, but they are the  
19 applicants, they can fully respond to any questions you may  
20 have.

21          MR. BAIOCCHI:    Thank you.

22          MR. SOMACH:    But you've got to be a little more  
23 specific.

24          MR. BAIOCCHI:    Unfortunately, you didn't put numbers

1 on the pages, but what it is, it states under number two,  
2 source Caples Lake, and on the bottom it's 21,581 acre-feet.

3 MR. SOMACH: Which application?

4 MR. BAIOCCHI: Application 29920 A.

5 Q Under number 4, could you please read into the record  
6 what the purposes of use are?

7 MR. ALCOTT: A Just off number 4 on this  
8 application?

9 Q Yes.

10 A It reads, the purpose of uses domestic, municipal,  
11 and irrigation.

12 Q Now, the question is, why wasn't recreation put down  
13 as a purpose of use since recreation is one of the purposes  
14 of use for Caples Lake?

15 MR. SOMACH: Well, these are not for diversions of  
16 water for retention in Caples Lake. I mean, you should have  
17 that point clarified. Everything that we have been doing is  
18 based upon releases, after water has been released from these  
19 upstream lakes.

20 MR. STUBCHAER: I think the application of the County  
21 is for keeping water in the lakes, but not the application of  
22 EID.

23 MR. SOMACH: No, there are no applications by the  
24 County or by El Dorado Irrigation District, that is El Dorado

1 County.

2 MR. STUBCHAER: But how about Alpine and Amador. Mr.  
3 Taylor.

4 MR. TAYLOR: Mr. Somach's statement was that neither  
5 El Dorado Irrigation District nor the Water Agency filed  
6 applications to include water for recreation.

7 MR. STUBCHAER: Right.

8 MR. SOMACH: Having now just testified, Mr. Alcott,  
9 is that an accurate statement?

10 MR. ALCOTT: A Yes, it is, Mr. Somach.

11 MR. TAYLOR: To go on with Mr. Stubchaer's question,  
12 yes, some of the other competing applications do include  
13 water for recreation purposes at the upper lakes.

14 MR. STUBCHAER: Mr. Baiocchi.

15 MR. BAIOCCHI: I didn't pick up on what you said, Mr.  
16 Taylor.

17 MR. TAYLOR: Some of the other applications,  
18 competing applications, do include water for recreation.

19 MR. BAIOCCHI: Competing applications.

20 MR. TAYLOR: Yes.

21 MR. BAIOCCHI: But not their specific applications.

22 MR. TAYLOR: That is the answer.

23 MR. BAIOCCHI: Q The question is, theoretically,  
24 based on this application, you could divert 21,581 acre-feet

1 of water out of Caples Lake for those three purposes of use?

2 I don't believe that's correct. I think by virtue of  
3 the application, we are not allowed to divert anything. It  
4 is through the good graces of the Board that we would be  
5 allowed to do that.

6 Q Okay. Is it true for the record Application 29920 A  
7 does not have recreation as a purpose of use?

8 A Yes, that's true.

9 Q Isn't it true that Application 29910 A does not have  
10 fish enhancement as a purpose of use?

11 A That is true.

12 MR. SOMACH: I object again. Now, we are talking  
13 about what is in the actual Draft. This could have been the  
14 subject of cross-examination before. Moreover, since all we  
15 are talking about is the applications themselves, certainly,  
16 even if Mr. Baiocchi didn't have the Draft as he said he  
17 didn't, because he said it wasn't mailed to him, the  
18 applications were the basis of a protest, so he must have  
19 certainly had those in time to cross-examine over the last  
20 couple of days on those issues.

21 MR. BAIOCCHI: Mr. Stubchaer, I filed a protest based  
22 on the Application Notice by the State Board. Very, very  
23 rarely do I get an application from the applicant. So we  
24 didn't review the applications, just simply what was stated

1 in the Application Notice by the Board.

2 MR. SOMACH: The Notice would have indicated what the  
3 purposes of the application were and that it did not include  
4 recreation uses at these lakes.

5 MR. STUBCHAER: Mr. Baiocchi, before I rule, I  
6 understand you didn't have this Draft Eir previously, but  
7 what line of questioning are you going to pursue in addition  
8 to what's in the application?

9 MR. BAIOCCHI: I was going to bring out another  
10 application where it brings in the three lakes and still  
11 recreation is not a purpose of use.

12 MR. SOMACH: I will stipulate that the applications  
13 are what they are and that there's been no modification of  
14 the purposes that have not been noticed, and that they don't  
15 include recreation.

16 MR. STUBCHAER: Mr. Baiocchi.

17 MR BAIOCCHI: Okay. I want to raise one question.  
18 Will Silver Lake, Caples Lake and Lake Aloha, based on any  
19 water rights permit issued by the Board be used for  
20 recreational purposes?

21 MR. SOMACH: Objection. The witnesses have  
22 absolutely no way of knowing the answer to that question. It  
23 is speculative and it is beyond the scope of their knowledge.  
24 If we only knew what the State Water Resources Control Board

1 was going to do --

2 MR. STUBCHAER: I think that is correct. I don't  
3 think anyone knows the answer to that question at this time.  
4

5 MR. BAIOCCHI: Thank you very much.

6 Q Now, I have a question that maybe Mr. Somach is going  
7 to object to since he has been objecting for three days, and  
8 I could have been a bad guy, because I was on the Lower Yuba  
9 River hearing, Alan Lilly, God bless him, objected, objected,  
10 and I finally raised my hand and asked Don Maughan, God bless  
11 him, to put a muzzle on Alan, and he did. So, I might have  
12 done that, but I have been a very nice person on this.

13 MR. TAYLOR: Mr. Stubchaer, Mr. Somach is entitled to  
14 raise every legal objection on behalf of his clients that the  
15 law entitles him to, and I think your comments are out of  
16 order.

17 MR. BAIOCCHI: I don't think so, because with respect  
18 to the Lower Yuba River hearing --

19 MR. TAYLOR: The Yuba River hearing isn't an issue  
20 here.

21 MR. BAIOCCHI: I understand that. I brought that out  
22 as an example, Mr. Taylor.

23 MR. STUBCHAER: Let's proceed.

24 MR. BAIOCCHI: Q Now, what I need to know is in the

1 Final Supplement, was there an evaluation made of the impacts  
2 to the Central Valley Project Improvement Act water?

3 MR. SOMACH: You're talking about the blue Final  
4 Supplement?

5 MR. BAIOCCHI: The Draft and the Final, both. One is  
6 the father and the other is the son document.

7 MR. SOMACH: Mr. Roberts.

8 MR. ROBERTS: A No.

9 MR. BAIOCCHI: And as I recall, please clarify, when  
10 you did your analysis on the Bay-Delta standards, what was  
11 stated concerning cumulative impacts to the new standards in  
12 the Bay-Delta?

13 MR. ROBERTS: A During the process of doing our  
14 analysis, I can't really remember what was stated, so I don't  
15 understand your question.

16 Q Well, the Board is going to -- they adopted new  
17 standards, and now we are going to find out who is going to  
18 have to, who being the water users, are going to have to meet  
19 those standards through the water rights process?

20 A Yes.

21 Q So, was that issue evaluated in the Draft and Final  
22 Supplemental document?

23 A As I believe was stated previously, it was evaluated  
24 to the extent that we acknowledged its existence and the

1 potential for new standards that EID and the Water Agency  
2 would have to comply with in the future when they are made  
3 specific.

4 Q           Wouldn't it be a consideration if, in fact, the  
5 Bureau would have to release water from Folsom Reservoir to  
6 meet the new Bay-Delta standards, that there might be a  
7 significant impact against the present users and also the  
8 future users, past uses and future uses of water from Folsom  
9 Reservoir?

10 A           I believe my response to that would be speculative.

11 Q           Does Public Law 101-514 supersede the Central Valley  
12 Project IA?

13           MR. SOMACH:   Q   Objection, that calls for a legal  
14 conclusion.

15           MR. STUBCHAER:   Sustained.

16           MR. BAIOCCHI:   Got it in the record, thank you.   That  
17 concludes my cross-examination.

18           MR. STUBCHAER:   Anyone else wish to cross-examine  
19 this panel?   Ms. Peter.

20           MS. PETER:   Mr. Stubchaer, on a housekeeping matter,  
21 this morning you sustained certain objections to Fish and  
22 Game's Exhibits 1 through 95.

23           MR. STUBCHAER:   Does this refer to this panel?

24           MS. PETER:   I have a question for this panel.   We

1 didn't leap up in the housekeeping section of the meeting. I  
2 wanted to clarify as to the portion that you did not sustain  
3 the objection. Those are now admitted into evidence; is that  
4 correct?

5 MR. TAYLOR: Yes.

6 **CROSS-EXAMINATION**

7 BY MS. PETER:

8 Q With respect to this panel, Mr. Alcott, if I could  
9 direct your attention to the Draft Supplemental EIR at page  
10 VI-2, and on that page it states that the El Dorado  
11 Irrigation District Notice of Exemption for acquisition of  
12 Project 184 was submitted to the California Department of  
13 Fish and Game.

14 And my question is, in fact, was that Notice of  
15 Exemption submitted to the California Department of Fish and  
16 Game?

17 MR. ALCOTT: I do not know, but this draft supplement  
18 refers to our submitting Notice for Exemption to the three  
19 county clerks, as well the Department of Fish and Game. I  
20 have been able to go back and confirm that in fact it had  
21 been submitted to the three county clerks. We understand we  
22 have not been able to get a confirmation from the El Dorado  
23 County clerks whether or not they sent on to your office a  
24 copy of the NOE along with the fee exemption which, we

1 understand, they did send to you.

2 Q Was the fee exemption sent?

3 A Well, they weren't in a position to confirm that  
4 absolutely.

5 Q Did anybody in the EID staff send the NOE to the  
6 Department of Fish and Game?

7 A No.

8 Q So, the only possibility would be through the clerk's  
9 office?

10 A That is correct.

11 MS. PETER: That is all the questions I have.

12 MR. STUBCHAER: Anyone else? Mr. Infusino.

13 MR. INFUSINO: Thank you, Mr. Stubchaer. Before I  
14 begin I do need some help from you to get some clarification.  
15 My understanding is that all of Exhibit 96 is available  
16 for cross-examination including the findings; is that  
17 correct?

18 MR. STUBCHAER: Mr. Taylor.

19 MR. SOMACH: Well, the findings are. Those findings  
20 are, in fact, what I thought we were going to have cross-  
21 examination on.

22 MR. STUBCHAER: Fine.

23 **CROSS-EXAMINATION**

24 BY MR. INFUSINO:

1 Q Mr. Alcott, I would like to call your attention to  
2 Exhibit 96-C which is a copy of El Dorado Irrigation  
3 District's CEQA findings adopted October 23, 1995.

4 MR. ALCOTT: A Yes, I have them.

5 Q I would like to further draw your attention to  
6 Section IV, which is entitled, Statement of Overriding  
7 Considerations.

8 MR. SOMACH: What page is that on?

9 MR. INFUSINO: Q That would be on page 5. And that  
10 section indicates that the adoption of the preferred  
11 alternative will avoid a water supply crisis; is that  
12 correct?

13 A Yes, under A-1-A.

14 Q Are there other alternative supplies available that  
15 EID could also avoid a water crisis?

16 A Are there others -- I presume so.

17 Q Without the water from these applications, which mean  
18 the ones before us today, and their request for partial  
19 assignment, could EID develop sources of supply sufficient to  
20 meet projected needs of its service area through 2015?

21 A I could only answer that with speculation.

22 Q Well, let's try it another way. Mr. Alcott, are you  
23 familiar with the water supply and demand study prepared by  
24 the County Water Agency?

1 A Somewhat.

2 Q And, did EID cooperate with the County Water Agency  
3 by providing data used in that study?

4 A Yes, we did.

5 Q I have a copy of the exhibits from the Water Supply  
6 and Demand Workshop Number 5, held Wednesday, May 17, 1995.  
7 To this copy is attached a certificate of authenticity,  
8 embossed with the seal of the County. Quality growth  
9 identified this document as Quality Growth's Exhibit Number 4  
10 on its list of exhibits, and for purposes of identification  
11 only at this point, I would like this exhibit acknowledged as  
12 Quality Growth Exhibit Number 4. Is that acceptable?

13

14 MR. INFUSINO: From this document I have extracted a  
15 table and for the record I am providing copies now to the  
16 staff and Mr. Stubchaer. There's also copies available for  
17 other parties, and there is a display over by the bulletin  
18 board.

19 Q Mr. Alcott, I first draw your attention to the three  
20 columns above GDPUD. According to the legend, the crisscross  
21 pattern depicts existing demands; is that correct?

22 MR. SOMACH: Objection. The purpose of the panel is  
23 to respond to questions with respect to the findings.  
24 Questions have been asked and an answer was provided. Now

1 cross-examination somehow has extended beyond what is in the  
2 findings to asking about exhibits that have not been  
3 otherwise introduced into evidence. I object on the basis of  
4 relevance and also, it is out of the scope of what was  
5 supposed to be a limited cross-examination.

6 MR. INFUSINO: May I respond?

7 MR. STUBCHAER: Yes.

8 MR. INFUSINO: The first time we got a chance to look  
9 at these findings was last week when they were offered as  
10 exhibits, and I suppose today they want to introduce them as  
11 evidence. At that point, the finding that this application  
12 is necessary to avoid a water supply crisis was available to  
13 us.

14 What I am trying to do is cross-examine on the issue  
15 or whether this application is necessary to avoid a water  
16 supply crisis. The exhibit has been available to all the  
17 parties to review. It was on file with the staff. It is  
18 relevant, and I think it is absolutely critical here. If  
19 there are other reasonable methods of getting supply for this  
20 water district outside of this application, I think that's  
21 relevant to the Board's consideration of this application.

22 MR. SOMACH: I don't dispute its arguable relevance,  
23 and if he wants to put it on as part of his case in chief, I  
24 have no problem with that. What I object to at the current

1 time is the attempt to cross-examine at this point in time  
2 after we have had two days to cross-examine on our case in  
3 chief in terms of the proposed project, and to attempt to  
4 bootstrap into further cross-examination at this time based  
5 upon findings which are in a document on overriding  
6 considerations.

7           The other thing I want to point out is there has been  
8 a mischaracterization even of the finding as a premise for  
9 the question that's being posed.

10           All that the finding says is that this supply will  
11 alleviate the shortage. It does not say as is purported that  
12 these applications are necessary to do so, and as Mr. Alcott  
13 has already testified, there may be speculatively different  
14 ways of going about the process. This was the project,  
15 however, that was before the Board of Supervisors and these  
16 are the findings in support of that project.

17           Again, my objection is that this line of questioning  
18 goes well outside the scope of what was supposed to be a  
19 fairly limited cross-examination.

20           The Board has been very lenient in allowing all the  
21 parties two times to cross-examine with very little  
22 limitations, and I object, as I did last week and as I  
23 thought the ruling this morning was, to go into a third day  
24 of non-limited cross-examination.

1           MR. INFUSINO:   Excuse me, did I hear you withdraw  
2 your objection to our ability to put our case in chief on at  
3 some time.

4           MR. SOMACH:   No.

5           MR. INFUSINO: I thought you said you had no problem  
6 with our presenting this in our case in chief.

7           MR. SOMACH:   Raising this -- you have no case in  
8 chief.     You've got a bunch of exhibits with no  
9 testimony.

10          MR. INFUSINO:   Can I have that stricken from the  
11 record. I object to that characterization. We have had no  
12 opportunity to put it on and he is already belittling it.

13          MR. STUBCHAER:  Do you want to have that part of the  
14 record read back?

15          MR. INFUSINO:   I want it stricken. I am objecting to  
16 his characterization of our record even before we presented  
17 it.

18          MR. STUBCHAER:  Mr. Taylor.

19          MR. TAYLOR:    I think it would be appropriate to  
20 strike those comments from Mr. Somach.

21          MR. STUBCHAER:  Which comments?

22          MR. TAYLOR:    The ones that indicated Mr. Infusino has  
23 no case in chief.

24          MR. SOMACH:    Well, in the context, I want to make

1 sure -- I know exactly what I said. In the context of having  
2 no testimony submitted, which was the subject of my objection  
3 in the first place, I really don't much care about what the  
4 Board does in terms of striking my statement in its entirety,  
5 except for the objection. The objection still stands, and  
6 that is that this questioning is outside the scope of what  
7 was supposed to be a very limited cross-examination on the  
8 findings.

9 MR. BIRMINGHAM: I rise to support Mr. Somach's  
10 objection, but for a different reason, and I want to state  
11 the reason. I'm supporting the objection because I, too,  
12 represent a public agency client before this Board, and I  
13 hate to see this line of questioning establish some kind of  
14 precedent. I am objecting on the ground of legal relevance  
15 because the questions are designed to be a collateral attack  
16 of legislative findings by legislative bodies, and for that  
17 reason, I think the questions are legally irrelevant as well,  
18 and I would state that objection.

19 MR. STUBCHAER: First, we will strike the portion of  
20 Mr. Somach's comments pertaining to the statement you have no  
21 case in chief. As to the objection, do you want to respond  
22 to Mr. Birmingham's comments?

23 MR. INFUSINO: This Board ultimately will have to  
24 make CEQA findings. It is stated in the Draft EIR that this

1 Board is anticipated to make CEQA findings. The basis of  
2 those findings is in that EIR and anything else in the record  
3 that is before you. It is relevant to this proceeding  
4 because, at some point in time, you're going to have to make  
5 an independent finding. I would hate to see the Board adopt  
6 similar findings to these when there are parties here ready,  
7 willing and able to provide evidence to suggest that if the  
8 Board chose to adopt similar findings to these, they would be  
9 in error. If we cannot provide that service to the Board,  
10 that would be your determination.

11 MR. STUBCHAER: The question is, I gather, Mr.  
12 Infusino, whether it is appropriate to try to do this during  
13 cross-examination or during your own testimony. I don't want  
14 to use the wrong word here, your direct presentation.

15 MR. INFUSINO: In the event you sustain Mr. Somach's  
16 objection, I would like an indication of exactly what in  
17 these findings we are allowed to cross-examine on, because  
18 I'm just going by the words printed here. I am at a loss if  
19 you sustain the objection to guide my own questions.

20 MR. SOMACH: I will add, Mr. Stubchaer, that Mr.  
21 Birmingham's objection is just simply another way, I think,  
22 of bringing to the Board the fundamental problem I  
23 articulated last week when there was a suggestion about the  
24 nature of these findings and whether or not they were in the

1 traditional sense subject to cross-examination in these  
2 hearings. If you recall, I submitted these documents at the  
3 request of Mr. Taylor so that the total environmental  
4 documentation for this project would be in the record.

5           The Board need not follow the findings of El Dorado,  
6 either agencies of El Dorado; and at any point in time, the  
7 Board is free as it moves through its environmental review to  
8 do as it wishes.

9           It is very peculiar, it seems to me, to have anyone  
10 respond to cross-examination questions that are focused on a  
11 document such as this because of the nature of the document.  
12 If there is a challenge to this, there is, of course, a  
13 separate avenue, which many of the participants and  
14 protestants have already followed with respect to the core  
15 environmental documents that are out there.

16           The problem we have other than answering simple  
17 questions about what is stated in the document is that there  
18 is no one here that is competent to testify beyond the four  
19 corners of these documents. They can merely repeat what is  
20 on the documents, and that is because the documents were  
21 generated by the Board of Supervisors and the Board of  
22 Directors in their legislative capacity, and it is only those  
23 bodies as bodies acting in their legislative capacity that  
24 could ever fundamentally answer the questions that are being

1 posed here.

2           We don't know what was in their minds when they voted  
3 for or against these documents.

4           MR. INFUSINO: My response to that is that first, Mr.  
5 Somach is absolutely correct, there is an alternative forum  
6 with respect to these. There is an alternative forum to deal  
7 with these CEQA issues.

8           Unfortunately, that forum is the Court system and  
9 that forum is a forum which I would be saddened if this Board  
10 was dragged into over these very issues.

11           I am trying to prevent the Board from making findings  
12 that will get it there, be dragged into that forum.

13           Secondly, on the question that these are legislative  
14 determinations made by legislative bodies and no one is here  
15 capable of testifying on the findings, I would like to remind  
16 the Board that Mr. Somach's examination of parties last week  
17 asked some very pointed questions about the intent of the  
18 legislative body. And he was not prevented from doing so.

19           MR. STUBCHAER: What we are going to do is take a 12-  
20 minute break during which time I am going to consult with  
21 counsel. We will start that right now.

22           (Recess.)

23           MR. STUBCHAER: All right, we will reconvene the  
24 hearing.

1           Regarding the objections, the questions regarding the  
2 need for additional water are irrelevant. The question I  
3 have for you, Mr. Infusino, is can you identify for me the  
4 difference between the Final and the Draft EIRs where the  
5 need for supplemental water has changed, and after we answer  
6 that, then I will rule on the use of the exhibits that you  
7 suggested earlier.

8           MR. INFUSINO: I didn't suggest that those two  
9 documents reflected a difference. I wasn't asking him to  
10 testify on either of those two. I was asking him to testify  
11 with regard to Exhibit 96-C.

12           MR. TAYLOR: 96-C, however, is predicated on the  
13 findings made within either or both of those documents.

14           MR. INFUSINO: The difference between the document  
15 and the Final is that the document can make recommendations,  
16 but whether or not the findings are actually made by the body  
17 is determined in the findings. So, until we have the  
18 findings before us based merely on the Supplemental  
19 Draft and based merely on the other exhibits, we have no  
20 indication for certain exactly what EID would be making in  
21 their Final.

22           MR. STUBCHAER: All right. Then with regard to this  
23 exhibit which you distributed, I don't think it is  
24 appropriate to use this exhibit on cross-examination.

1           However, you may be able to phrase your questions and  
2 get the answers you want without reference to this exhibit.

3           MR. INFUSINO: Thank you, Mr. Chairman.

4 Q           So, let's see if I remember what we established. We  
5 established Mr. Alcott is familiar with supply and demand  
6 studies prepared by the County Water Agency.

7           MR. ALCOTT: A Yes.

8 Q           And that the EID did cooperate with the County Water  
9 Agency by providing data for that study; is that correct?

10 A          Yes.

11 Q          Are you familiar with the projections made in that  
12 study regarding certain other supplies available to EID?

13 A          Yes.

14 Q          Did those include Crawford Ditch?

15 A          I don't recall.

16 Q          The witness establishes he is familiar with the  
17 document.

18 A          Yes.

19           MR. INFUSINO: May he refresh his memory by reviewing  
20 it?

21           MR. STUBCHAER: Yes.

22           MR. SOMACH: Again, I want to interpose an objection  
23 to the fact that this is outside of the scope of this limited  
24 cross-examination. You were not asking questions of the

1 witnesses having to do with the water supply study that is  
2 not in the record, that has not been testified to by these  
3 witnesses, and which is not part of the findings made by the  
4 Board of Supervisors or the Directors, or which is part  
5 of anything else that this limited cross-examination goes  
6 to.

7 MR. STUBCHAER: Mr. Infusino, could you ask your  
8 questions without referring to that particular study?

9 MR. INFUSINO: Do you know of any other supplies of  
10 water available to EID other than the applications here  
11 before the Board?

12 MR. SOMACH: Objection, clarification on what other  
13 supplies available means.

14 MR. INFUSINO: Are you familiar with --

15 MR. STUBCHAER: Overruled.

16 MR. INFUSINO: Q Are you familiar with Crawford  
17 Ditch?

18 A Yes.

19 Q Such as what we previously referred to as the Fazio  
20 water?

21 /////

22 /////

23 A That is not available to us.

24 Q Is it potentially available to you?

1 MR. SOMACH: Objection, speculation.

2 MR. STUBCHAER: Sustained.

3 MR. INFUSINO: Q Does Public Law 101-514, the  
4 Central Valley Project Improvement Act, suggest that such a  
5 supply may be made available?

6 MR. SOMACH: Objection, legal conclusion.

7 MR. STUBCHAER: He is not asking for a conclusion, I  
8 don't think. He is asking for something that might be made  
9 available. Mr. Taylor.

10 MR. TAYLOR: It strikes me as an extremely  
11 speculative inquiry, what the CVPIA as amended means is a  
12 legal issue, and whether one can read that question into it  
13 as a possibility that results, seems to me to be quite  
14 speculative.

15 MR. STUBCHAER: All right. Sustained.

16 MR. INFUSINO: Q Has EID ever considered or ever  
17 studied the potential for Fazio water to be supplied to EID?

18 A Yes.

19 Q Has EID ever considered water efficiency as a method  
20 of increasing its supply?

21 A Yes.

22 Q Has EID ever considered water reuse?

23 A Yes.

24 Q So, I think we have listed four other possible

1 methods of supply other than the application before us; is  
2 that correct?

3 A That is what I counted, yes.

4 Q If you consider those quantities of water supplied  
5 through those four sources, is it possible for EID to meet  
6 demand in 2015?

7 A I don't know.

8 Q Mr. Alcott, have you reviewed Exhibit 96-B and 96-C,  
9 B being the Water Agency findings, and C being the findings  
10 of the EID?

11 A I have reviewed 96-C.

12 Q And is it true that you haven't reviewed 96-B?

13 A I have seen 96-B, and it hasn't been reviewed to the  
14 extent 96-C has by me.

15 Q Have you ever seen El Dorado County Water Agency  
16 referred to EDCWA?

17 A Yes.

18 Q I call your attention, Mr. Alcott, to page 6 of  
19 Exhibit 96-C, paragraph 6, subparagraph A, where it is  
20 written: EID hereby finds and certifies that it has  
21 received, reviewed and considered the information contained  
22 in the Draft and Final Supplement to the EIR prior to  
23 approving the project, and that the Draft and the Final  
24 Supplement to the EIR reflect the independent judgement of,

1 and then the letters EDCWA are then crossed out and printed  
2 below are the letters EID. Is that correct?

3 A Yes.

4 Q Mr. Alcott, pages ES-31 through ES-43 are in the  
5 table in the final and it is entitled mitigation monitoring  
6 recommendations -- I am moving over to.

7 A I am with you. Yes, Table V-1.

8 Q And it is entitled mitigation and monitoring  
9 recommendations?

10 A Yes, it is.

11 Q And on page 2 of the findings, EID adopts the  
12 mitigation measures that are solely or partially its  
13 responsibility; is that correct?

14 A Yes.

15 Q And that table that is before you identifies over 50  
16 mitigation measures that EID is fully or partially  
17 responsible for implementing. Is that an accurate  
18 approximation?

19 A I am not sure of the number, but it is the table  
20 referred to in the findings.

21 Q Mr. Alcott, are you familiar with the Supreme Court's  
22 decision in Laurel Heights Improvement Association, San  
23 Francisco versus the Regents of the University of California,  
24 1988?

1 A I have not read it recently.

2 MR. SOMACH: Have you ever read it?

3 A I don't believe I have.

4 MR. INFUSINO: Q That case states and the Court  
5 found: Because an EIR cannot be meaningfully considered in a  
6 vacuum devoid of reality, a project's proponents prior  
7 environmental record is properly a subject of close  
8 consideration in determining the sufficiency of the  
9 proponents' promises in the EIR.

10 At this point, I would like to ask some question if  
11 there are no objections regarding the applicant's prior  
12 environmental record.

13 MR. SOMACH: Objection.

14 MR. STUBCHAER: Mr. Taylor.

15 MR. TAYLOR: Are your questions going to deal with  
16 the environmental document that is currently before the  
17 Board?

18 MR. INFUSINO: They are going to deal with his prior  
19 environmental record for two reasons: One is that, again,  
20 this Board will be adopting mitigation measures. It is  
21 anticipated that the Board will be adopting mitigation  
22 measures and conditions in the event that the project is  
23 approved, and the Supreme Court has stated it is very  
24 relevant what the applicant's prior record is.

1           Secondly, the avenue will discuss public trust issues  
2 that are applicable.

3           Therefore, the questions will discuss public trust  
4 issues which we have already established are relevant in this  
5 Board hearing.

6           MR. TAYLOR:   Mr. Stubchaer,   I recommend that we  
7 allow Mr. Infusino to at least start down this line of  
8 questioning and see where he is with it.  I suspect we know.

9           MR. STUBCHAER:   All right.   We will overrule the  
10 objection and see where we go.

11          MR. INFUSINO:   Q  Mr. Alcott, did EID receive a grant  
12 for leak detection equipment from the Department of Water  
13 Resources?

14          MR. SOMACH:   Objection.

15          MR. STUBCHAER:   Mr. Taylor.

16          MR. TAYLOR:   Grounds for objection?

17          MR. SOMACH:   Relevance.

18          MR.   INFUSINO:   I'm trying to determine if they  
19 complied with the conditions of a grant as it relates to  
20 their environmental record.

21          MR.   STUBCHAER:       Is leak detection in the  
22 environmental record?

23          MR. INFUSINO:   I was going to start there and move  
24 along to the other.

1           MR. SOMACH: I suggest this whole line of questioning  
2 is irrelevant, that they may be relevant to some judicial  
3 challenge of the environmental documentation on its merit,  
4 but it is not relevant to the Board's determination with  
5 respect to the grant of water rights here; that the only  
6 environmental documentation, in fact, that might be relevant  
7 in that regard is the State Board's own determination in  
8 terms of conditions with respect to mitigation and monitoring  
9 that it may pull over.

10           What he is suggesting now in essence is that the  
11 Board itself might someday find itself subject to cross-  
12 examination on its findings and determinations with respect  
13 to its record, and I know how the State Board would feel  
14 about that type of assertion in any courtroom.

15           I have the same objection here in terms of the  
16 ability to continue this line of inquiry with respect to  
17 determinations by the Board of Supervisors and with respect  
18 to the EID Board of Directors in areas where they are  
19 exercising their legislative mandate from the legislature.

20           MR. STUBCHAER: Mr. Taylor.

21           MR. TAYLOR: Mr. Stubchaer, it strikes me that the  
22 Laurel Heights stands for the proposition of how a court will  
23 look at a final EIR prepared by a lead agency when  
24 determining the adequacy of that document, and we laid out as

1 part of the ground rules for this proceeding that the Board  
2 is not involved in determining the adequacy of the Final EIR  
3 or SEIR in this case, so the basic question becomes one, it  
4 seems to me, in terms of your ruling, are Mr. Infusino's  
5 questions really relevant to the heart of the consideration  
6 before the Board at this time.

7 MR. STUBCHAER: Mr. Infusino:

8 MR. INFUSINO: The reason I read the quote rather  
9 than paraphrase it is because there are some important words  
10 in it. It says, in determining the sufficiency of the  
11 proponents' promises, and that's really what we are getting  
12 at here, and that is really what this is all about because  
13 what we have been hearing from parties throughout this  
14 hearing, League to Save Sierra Lakes, those folks, they want  
15 some certainty and they are not sure they are going to get  
16 certainty with regard to a lot of aspects of the operation of  
17 this project, whether it be releases, lake levels, what have  
18 you.

19 The EID, on the other hand, has put forth a phrase,  
20 historical operations as its mantra for mitigation in these  
21 hearings.

22 Before the Board makes a decision whether a term or a  
23 phrase or a concept like historical operations is going to be  
24 sufficient to restrain the other interests of the applicants,

1 it is important to see if what the previous opportunities the  
2 applicant has had to demonstrate that yes, we take conditions  
3 seriously when we have them, we take requirements seriously  
4 when we are met with them.

5 MR. STUBCHAER: Are you referring to conditions,  
6 requirements in other EIRs or in other --

7 MR. INFUSINO: Effluent requirements at the creek at  
8 El Dorado Hills, and I was trying to refer to the condition  
9 in the grant which evidently is not going to happen.

10 MR. STUBCHAER: You didn't quite answer my question.  
11 You partially answered it. Are these requirements or  
12 mitigations in EIRs that were not met or are these other  
13 conditions?

14 MR. INFUSINO: It is not clear to me whether the  
15 environmental documentation was prepared prior to the permits  
16 that these questions go to. Maybe Mr. Alcott could help us  
17 there. Was the environmental documentation prepared prior to  
18 the NPDES permits at El Dorado Hills and Deer Creek creating  
19 conditions in those permits?

20 MR. ALCOTT: A I do not know.

21 MR. STUBCHAER: It seems to me this is the third time  
22 we've hit on this issue. The first time I didn't allow it,  
23 the second time we allowed some questioning on the difference  
24 between PG&E's operation and EID's potential operation. Now,

1 we are coming back to visit it again.

2 MR. INFUSINO: I was waiting for a more perfect  
3 context, and since we are dealing with the findings here that  
4 seems to be the appropriate context.

5 MR. STUBCHAER: I think I will sustain the objection.

6 MR. INFUSINO: Okay. For the record, I would like to  
7 acknowledge that at this time Quality Growth is having great  
8 difficulty in that we have no clear indication on Mr.  
9 Somach's objection to our providing a case in chief and  
10 that's severely hampered our ability to effectively cross-  
11 examine.

12 Does the Board have any indication or, Mr. Stubchaer,  
13 do you have any indication when the response to Mr. Somach's  
14 objection will be provided?

15 MR. STUBCHAER: Just a moment.

16 MR. TAYLOR: As I indicated at the opening of the  
17 hearing last week, it seems to me the appropriate point to  
18 take up Mr. Somach's objection to your proposed presentation  
19 is at the time when you, in fact, are prepared to put on your  
20 presentation before the Board, and that comes at the time you  
21 are prepared to put your presentation before the Board.

22 MR. INFUSINO: It's at the very last.

23 MR. TAYLOR: Yes.

24 MR. INFUSINO: I think from a due process standpoint

1 we would like to formally acknowledge in the record that that  
2 is hampering our ability to present our case.

3 MR. TAYLOR: Would you care to tell us why that is  
4 hampering your case?

5 MR. INFUSINO: It appears to be causing a great deal  
6 of consternation in cross-examination, because what is  
7 occurring is I am attempting to get witnesses to testify  
8 based on evidence that we anticipate being able to introduce  
9 at some point in time. But we can't use that information,  
10 and one of the objections has been well --

11 MR. TAYLOR: Mr. Infusino, whether El Dorado has good  
12 grounds for posing an objection to your line of questions, I  
13 think, is quite apart from the question of what evidence you  
14 might put before the Board later and whether El Dorado would  
15 also have objections to that. I think these things have to  
16 be treated separately.

17 MR. INFUSINO: I was just trying to save the Board  
18 some time. I may be less inclined to pursue this line of  
19 questioning if I were sure that I could pursue them through  
20 evidence at a later date.

21 MR. STUBCHAER: Well, your objection is noted on the  
22 record, of course, and Mr. Infusino, I have no doubt about  
23 your ability to have your witnesses testify. The question  
24 that I understood was whether or not the exhibits would be

1 accepted into the record. Mr. Taylor.

2 MR. TAYLOR: There is a little confusion here. Mr.  
3 Infusino was not proposing to bring any witnesses forward, in  
4 fact, he has clearly indicated he does not intend to do so.

5 The difficult question is whether any of these  
6 exhibits can be admitted into evidence without sworn  
7 testimony of witnesses.

8 There's an additional problem, even if it were  
9 submitted, it would be solely hearsay, and the Board's  
10 regulations preclude the Board from making findings based on  
11 hearsay alone.

12 MR. STUBCHAER: Yes. I stand corrected.

13 MR. INFUSINO: But it does allow the introduction of  
14 hearsay that is attached to other relevant testimony; is that  
15 correct?

16 MR. TAYLOR: Any hearsay may be admitted provided it  
17 may be done in a court of law.

18 MR. INFUSINO: Okay. I have no further questions.

19 MR. STUBCHAER: Okay, thank you. Staff.

20 **EXAMINATION**

21 BY MR. LAVENDA:

22 Q I don't want to tread on information that was  
23 discussed in 1993, but I do want to clarify the record in  
24 stating, and I would like confirmation from the panel on

1 this, your original intent in these applications was to  
2 divert water through El Dorado Canal and to use Sly Park as a  
3 point of rediversion; was it not?

4 MR. ALCOTT: A It was.

5 Q The applications as amended by you at request from  
6 this Board resulted in the withdrawal of that intent; did it  
7 not?

8 A It did.

9 Q I want to explore one response to a question on  
10 Section III, page 21 of the Final Supplemental EIR that was  
11 visited earlier, I believe, during the cross-examination of  
12 Mr. Volker.

13 A III-21?

14 /////

15 Q Roman numeral III, page 21, response to comments in  
16 the Final Supplemental EIR. I believe it is the last entry  
17 on the page in the blue copy that I had, and this pertains to  
18 plans for increased storage in Sly Park.

19 As I recall the testimony given in response to Mr.  
20 Volker's question concerning those plans, it was a negative,  
21 there are no plans for changing storage in Sly Park; is that  
22 correct?

23 A Correct.

24 Q Were there ever plans for changing storage in Sly

1 Park or are there future plans, to your knowledge?

2 A This is the first time I've ever heard anyone suggest  
3 plans to enlarge Sly Park. I am not aware of the Bureau of  
4 Reclamation, and certainly no one from EID, ever suggesting  
5 enlargement of Sly Park.

6 Q Was there any intent other than plans to utilize  
7 increased storage in Sly Park as opposed to formal plans?

8 A There has been an interest in adding flash boards, if  
9 you will, to the spillway at Sly Park, and that interest was  
10 pursued through the Bureau of Reclamation. However, it has  
11 been put on hold because of Federal NEPA concerns.

12 Q Could that be characterized as plans, historical,  
13 present or future?

14 A Could it be characterized?

15 Q Yes, that interest.

16 A I suppose it could be.

17 MR. LAVENDA: Thank you.

18 **EXAMINATION**

19 BY MR. CANADAY:

20 Q Just to clarify Mr. Lavenda's question, Mr. Alcott,  
21 isn't it true that El Dorado Irrigation District did file an  
22 environmental document for the modification of the spillway  
23 for Sly Park?

24 A Filed a document?

1 Q Environmental document and approve the project, EID  
2 went far enough along to approve the project but the Bureau  
3 has not approved it; is that correct?

4 A I can't confirm or deny your statement. I don't  
5 recall. It was several years ago.

6 Q Mr. De Haas, are you aware of any?

7 MR. DE HAAS: A No, I am not. I just know it was  
8 discussed at one time.

9 MR. ALCOTT: A I know during the discussion there  
10 was considerable concern from the Federal agencies regarding  
11 environmental impacts, most notably cultural impacts, in  
12 fact, I don't recall the documents that were filed on our  
13 part.

14 Q My line of questions are on 96-B and C, which I  
15 believe was the point of this morning's panel. To clarify  
16 for me, the decision path, the lead agency for the  
17 Supplemental EIR and, in fact, the previous Draft and Final  
18 EIR for the El Dorado County Water Program was the El Dorado  
19 County Water Agency; is that correct?

20 MR. ALCOTT: A Yes.

21 Q And EID functioned as a responsible agency in those  
22 decisions?

23 A Yes.

24 Q Are the members of the El Dorado County Water Agency

1 one and the same with the Board of Supervisors?

2 A Well, it is the same individuals.

3 Q The same individuals.

4 A Operating under two different --

5 Q Enabling laws.

6 A Correct.

7 Q I will refer you to the Final EIR of the El Dorado  
8 County Water Agency water program and the El Dorado project  
9 Final EIR on page 5-7, and these pages are referred to as  
10 errata changes in the document. I will refer you to the  
11 fourth revision from the bottom of the page. It says, to  
12 revise page 9-5, paragraph 5, line 3, to read, it is also  
13 considered an unavoidable impact because, and then what is  
14 stricken from what was originally there was, the overall  
15 objectives of the program are to provide water for this  
16 projected growth: Limiting water supplies to reduce growth  
17 would compromise the basic objective of the water program.

18 That's what was stricken, and in its place was  
19 added, projected growth is expected to occur if the water  
20 program is implemented.

21 Is that what that says?

22 MR. ALCOTT: A That is a correct reading, yes.

23 Q Next, I would like to refer you to the Final  
24 Supplement to the El Dorado County Water Agency program, and

1 El Dorado Project EIR. Page ES-4, Executive Summary, page 4,  
2 and I will read the top paragraph: The secondary impacts  
3 associated with this growth in the EID Service Area include  
4 inclusion of vacant land; increased traffic and noise,  
5 increased emission of air pollutants; increased demand for  
6 public services; and habitat loss. While evaluated in a  
7 general level of detail in the EIR, and I am assuming that  
8 means this EIR, Supplemental EIR --

9 MR. ROBERTS: A The sequence of documents, yes.

10 Q The secondary impacts and mitigation measures are  
11 evaluated in detail in the Draft EIR on the El Dorado County  
12 General program.

13 Did I read that correctly?

14 A Yes.

15 Q The Board of Supervisors for El Dorado County wearing  
16 the supervisory hat, will be the agency that adopts or will  
17 implement mitigations for secondary growth impacts; is that  
18 correct? Anyone on the panel know whether that would be the  
19 body that would do that?

20 MR. ALCOTT: A Yes, the Board of Supervisors will  
21 adopt the EIR for the General Plan and whatever associated  
22 responsibilities go with it.

23 Q Now, I will refer you back to 96-B, page 3, point 5,  
24 and that point says, and it is part of the findings made by

1 the El Dorado County Water Agency in its adoption of the  
2 Supplemental EIR, point 5 says it finds all mitigation  
3 measures identified for significant secondary growth impacts,  
4 pages 9-5 to 9-52 of the 1992 Draft EIR as modified by page  
5 5-7 of the 1993 Final EIR are changes or alterations to the  
6 project which are within the responsibilities of jurisdiction  
7 of another agency, the County of El Dorado, and that such  
8 mitigation measures have been or can and should be adopted by  
9 that public agency.

10           Is it the expectation of either EID or El Dorado  
11 County Water Agency that mitigations identified by these  
12 documents to reduce or avoid secondary impacts are going to  
13 be adopted in the General Plan?

14 A           Yes.

15 Q           Dr. Roberts, I would like to direct your attention to  
16 the Final Supplemental EIR, page 3-16, which is a response to  
17 comments, and this particular response is addressing comments  
18 to particular mitigation measures, and it is dealing with  
19 sensitive plants and wildlife species. We are referring to  
20 project 1-B in this case and in the second paragraph on 3-16  
21 it says: If disturbance or reduction of populations of one  
22 or more of these special status plants and animals is  
23 unavoidable, the impact could not be mitigated to a less than  
24 significant level. Attempts to relocate these rare plants

1 are not considered feasible (Jones and Stokes Associates,  
2 1992). Partial mitigation is possible through offsite  
3 management of other populations of identified special status  
4 plants and animals.

5 Q Could you describe to me what you meant by off-site  
6 management of these other populations?

7 MR. ROBERTS: A Replacement facilities, other  
8 locations, but the statement that you quoted, you did not  
9 quite quote correctly: Attempt to relocate these rare plants  
10 are not considered reliable, and we went back to Jones and  
11 Stokes to ask about that. It was not a statement of being  
12 feasible. And I cannot go further. I do not know further.

13 Q My question refers to what you meant by off-site  
14 management. By off-site management, are you talking about an  
15 area that is dedicated for the management of these species as  
16 opposed to other types of activities on that land? I'm  
17 trying to understand what you meant by that.

18 A As I stated, and I initially answered, it is reserved  
19 areas for special use of these species.

20 Q Does anyone on the panel have an idea when the El  
21 Dorado County Board of Supervisors will act on the General  
22 Plan? That is the 64 thousand dollar question I'm asking.

23 MR. ALCOTT: A I will accept that as an answer.  
24 Maybe as a more direct response, they are expected to take

1 action later this year or early next year.

2 MR. CANADAY: That's all I have, thank you.

3 MR. STUBCHAER: Mr. Taylor.

4 MR. TAYLOR: No questions.

5 MR. STUBCHAER: I have no questions. Do you have any  
6 redirect, Mr. Somach?

7 MR. SOMACH: No. I would be afraid if I asked one  
8 question we would be here for another hour on cross-  
9 examination.

10 MR. STUBCHAER: Okay, exhibits.

11 MR. SOMACH: I think that the only exhibits that were  
12 outstanding after last time were exhibits in their entirety,  
13 96, 96-A, B, and C.

14 MR. STUBCHAER: You are offering those in evidence?

15 MR. SOMACH: I would like to move those into evidence  
16 and confirm the other exhibits were, in fact, although I  
17 recall no objections to the other exhibits. That was through  
18 99, I might add.

19 MR. STUBCHAER: Are there any objections? Mr.  
20 Gallery.

21 MR. GALLERY: I have no objections, Mr. Stubchaer.  
22 It did occur to me that I had a couple of questions on  
23 Exhibit 100, the leakage exhibit. It occurred to me that Mr.  
24 Hannaford would be back here tomorrow, and I might be able to

1 ask him a couple of questions at this time.

2           MR. SOMACH: We have no plans of having Mr. Hannaford  
3 here tomorrow. Moreover, I am not offering Exhibit 100 into  
4 the record, nor 101 nor 102-A and B. I'm only offering  
5 exhibits through 99.

6

7           MR. GALLERY: We have no objection to its going in.  
8 I wondered if there was going to be an opportunity to ask  
9 questions.

10           MR. SOMACH: If it is going to go in, someone else is  
11 going to have to put it in, because I am not putting it in.  
12 I supplied them in response to a request.

13           MR. VOLKER: Mr. Stubchaer, the League to Save Sierra  
14 Lakes objects strenuously to the admission into evidence of  
15 96 through 99. They were not furnished to the public or to  
16 the parties I represent in a timely manner. Everyone else  
17 was required to submit their proposed exhibits by October 2.  
18 This has resulted in prejudice to the parties I represent.

19           I personally have not had time to review those  
20 exhibits that hampered my cross-examination this morning, and  
21 I would suggest that this Board, in order to preserve the  
22 rights of those who have been injured by this oversight,  
23 reconvene this hearing at a future date to permit cross-  
24 examination on this new evidence.

1           MR. SOMACH: That's not accurate. 97, 98, and 99  
2 were submitted at the time of all the other exhibits. They  
3 were timely filed. The only exhibits that were not filed at  
4 the time of our initial submission were 96-A, B, and C. We  
5 had a great deal of discussion about those. I provided those  
6 exhibits at the request of Mr. Taylor. We have now made our  
7 witnesses available for cross-examination on those exhibits.

8           My understanding is that you're going to allow  
9 comments on those exhibits for a period, co-extensive with  
10 the briefing period. As a consequence, in the first  
11 instance, all of the exhibits I have offered in, except for  
12 A, B, and C, were in fact, were submitted timely. And I  
13 believe you already ruled on 96-A, B, and C.

14          MR. STUBCHAER: Mr. Volker, you indicated your  
15 objection previously and Mr. Taylor and I responded to it  
16 then. Your objection is noted on the record. Are there any  
17 other objections? Mr. Birmingham.

18          MR. BIRMINGHAM: Just as a matter for purposes of the  
19 record, I think Mr. Volker is estopped from making his  
20 objection because during the testimony of his panel last  
21 Wednesday, some of the witnesses that he presented, the lay  
22 witnesses, actually produced and gave to the Board  
23 photographs that had been taken within the last, I believe,  
24 the testimony was 48 hours, and if Mr. Volker is going to

1 present that kind of evidence, I don't see how he can object  
2 to the Board asking for and receiving the documents marked  
3 96-A, B, and C.

4 MR. STUBCHAER: Mr. Baiocchi.

5 MR. BAIOCCHI: We support the objections by Mr.  
6 Volker and the clients that he represents, for the record.

7 MR. STUBCHAER: Your objection is noted. I am going  
8 to rule that the exhibits are accepted into evidence.

9 MR. SOMACH: Thank you, Mr. Stubchaer.

10 MR. STUBCHAER: Anything else, Mr. Taylor? Okay,,  
11 thank you.

12 The next panel for direct testimony will be the  
13 Expert Panel for the Sierra Club, Kirkwood Public Utility  
14 District, and Alpine County. Mr. Volker.

15 MR. TAYLOR: Mr. Stubchaer, I believe Mr. Volker also  
16 intends to call another lay witness, Mr. Plasse.

17 MR. STUBCHAER: He had two lay witnesses who couldn't  
18 be here Thursday, Mr. Crawford, I think it was.

19 MR. VOLKER: Yes, Mr. Stubchaer. My preference is to  
20 present the two lay witnesses as a panel and then present the  
21 experts as a panel later today.

22 MR. STUBCHAER: With individual cross-examination or  
23 combined cross-examination?

24 MR. VOLKER: Each panel would be cross-examined



1 Q Does that accurately reflect your testimony today?

2 A Yes, it does.

3 Q Would you care to summarize your testimony for the  
4 Board, please?

5 A I would like to make a few additional comments. I am  
6 not an expert on EIRs or any of that sort of legalese, but I  
7 do have a very vested interest in what goes on with Silver  
8 Lake.

9 My grandfather homesteaded 160 acres at the south end  
10 of Silver Lake in 1853. It's been family land ever since,  
11 and in fact he actually sold some water rights to the entity  
12 that eventually built the dam at Silver Lake that allowed it  
13 to become the size of lake that it is at this time.

14 That expansion of the lake level has been a natural  
15 features of that area landscape for approximately 118  
16 years. I find it kind of an interesting debate as to whether  
17 lake are expanded or natural lakes when statewide flood  
18 control studies are conducted on hundred-year flood plains,  
19 and this has been there for 118 years, so I think we have got  
20 the studies beat on that. My family has had ample  
21 opportunity over the years to develop the lands that we own  
22 that are directly adjacent to the lake, but we have  
23 intentionally left it open space over the years. Its  
24 availability for day use activities by the general public for

1 everything from fishing and swimming from its shores to small  
2 boat and canoe launching at the inlet has been an advantage  
3 to the surrounding area and something that a lot of people  
4 have enjoyed over the years and, hopefully, for years to  
5 come.

6           Now we find ourselves confronted with a potential  
7 significant shoreline impact created by any draw-down of the  
8 water levels for the purpose of real estate development in El  
9 Dorado County. It seems like the whole thing boils down to  
10 the need for water for real estate development versus the  
11 need for water for public access and enjoyment.

12           It was just a few years ago that the Federal  
13 government conducted a study with respect to the viability of  
14 cabin leases around the lake and how that seemed to affect  
15 the public's access to a high mountain lake that has  
16 everything available on it, and it seems sort of  
17 contradictory at this time that we have a potentiality of  
18 moving away from the direction that the Federal government  
19 would like to see it go and have as much public access  
20 available to the lake as possible, and a strong possibility  
21 of this Board's actions compromising that ability.

22           We continue to operate the resort at Silver Lake.  
23 Sometimes I have a question why, as far as the effort that it  
24 requires.

1           If I had some of the same motivations that other  
2 entities here have, I probably would like to sell 150 acres  
3 on a lake in the middle of a national forest with a business  
4 on it and just say, thanks for the cash and we will see you  
5 later.

6           But my family didn't work that property for 153 years  
7 to do that. Consequently, my wife and I continue to run the  
8 resort along with my older sister. We have interrupted our  
9 private lives considerably. I have a business in Folsom that  
10 between spreading my efforts between that business and the  
11 Silver Lake business and moving the family from our home in  
12 Jackson to Silver Lake for four months out of the year is  
13 about a seven-day a week schedule. But those efforts see to  
14 it that approximately 36,000 campers a year, some of them  
15 third generation, like I have a number of campers that say to  
16 me that their grandfather started bringing them up there when  
17 they were kids and caught their first fish in Silver Lake,  
18 and all those sorts of things, and I think our efforts see to  
19 it that people are still able to enjoy the recreational  
20 activities that are available from and dependent upon a full  
21 lake.

22           And I would just like to see this Board take the  
23 recreational aspects that apparently were not taken into  
24 consideration in the EIRs, from what I have heard this

1 morning, into consideration and place whatever type of  
2 criteria they can to see to it that those are not  
3 compromised. Thank you.

4 MR. STUBCHAER: Thank you.

5 MR. VOLKER: Mr. Plasse, I have a couple of follow-up  
6 questions. You mentioned that reduction in lake levels  
7 affects your family's resort business. Can you tell us first  
8 what use your family makes of the near shore portion of your  
9 property, and secondly, could you explain what impacts a  
10 lower lake level has on those uses.

11 A Well, our family makes no use of the near shoreline  
12 for the purposes -- I mean, we haven't developed it to have a  
13 direct use of it. We have left it available for public  
14 access, and I would say that that is the use that our family  
15 makes.

16 We have facilities there in the form of restaurant  
17 facilities and camping and so forth, but I think one of the  
18 main draws of our camping facility is the ease and access to  
19 the lake without having to walk between cabins or condos or  
20 trailer sites or anything else. It is completely open space  
21 and people can use it at their own will.

22 We have no charge or fees or anything else for that.  
23 Anybody can come in and launch a small boat or canoe or  
24 anything else on our property and that's the uses that we

1 have made of it.

2           And a lowering of the water level, because the lake  
3 is so shallow and gradual at that end, for every foot that  
4 the lake level goes down, it has a significant receding of  
5 the shoreline in that area and eventually to the point where  
6 all public access to the lake from the whole south end is  
7 very compromised just from the standpoint of availability.

8 Q           When the lake level is lowered significantly, does  
9 that expose a vast area of mud flats?

10 A           Very much so. If you take a picture of Silver Lake at  
11 this time of the year, late in the fall, you can see how much  
12 mud flat there is out there, but principally this year with  
13 the amount of snow runoff that we had, we had a full lake,  
14 and so 80 to 100-some geese enjoyed that mud flat end of the  
15 lake considerably with the grass growing up.

16 Q           You anticipated my last question, which was since  
17 your family has preserved the near shore environment for  
18 public use, does that afford opportunities unique in this  
19 part of the country for wildlife viewing along this lake?

20 A           Very much so. We have seen this particular flock of  
21 geese grow from 10 to 12 geese, I would say, up to 80 or 100  
22 geese who frequent that end of the lake. I guess it has to  
23 do with the grasses that grow up through the water and  
24 provide an excellent habitat for them, but it certainly has

1 been healthy for them. Their flock has probably quintupled  
2 over the years.

3 MR. VOLKER: Thank you very much, Mr. Plasse.

4 Our next witness, Mr. Stubchaer, is Mr. Jim Crenshaw.

5 **DIRECT EXAMINATION**

6 BY MR. VOLKER:

7 Q Mr. Crenshaw, would you state your name for the  
8 record, please?

9 A James Crenshaw.

10 Q Mr. Crenshaw, have you had an opportunity to review  
11 your testimony which has been marked as SCLDF 95 JC-1?

12 A Yes, I have.

13 Q Does that accurately reflect your testimony today?

14 A Yes, it does.

15 Q Do you care to summarize your testimony for the  
16 Board, please?

17 A Sure. I would love to. We are concerned about the  
18 lake levels. We are also very concerned about the level of  
19 flow in the rivers and in the Lower American River and the  
20 Bay-Delta.

21 As the Board knows, during drought years, there was a  
22 considerable problem with Delta outflows. Salinity standards  
23 were violated and there has been significant loss of habitat  
24 and population numbers for a number of species, including

1 winter-run Delta smelt. There are some other species that  
2 are being looked at as far as listed species, the spring-run  
3 and some others.

4           So, we are pretty concerned about the cumulative  
5 impacts that are going to occur with the Bay and Delta. I  
6 don't see anywhere that has been mitigated for, and we are  
7 real concerned about that. If the Board allows continued  
8 degradation of the Bay-Delta, I think our children are going  
9 to look forward to having a pretty sterile environment there  
10 and I really think that's going to be a problem.

11           However, I think the Board can adequately deal with  
12 all of these kinds of issues, including El Dorado, and  
13 hopefully because of the December 15 agreement, the Board  
14 will find its way to put adequate flows back in the Bay-  
15 Delta, and I think should probably do that before any more  
16 water rights are allowed to be added on any tributaries.

17 Q           Thank you, Mr. Crenshaw. A few follow-up questions.

18           You are President of the California Sport Fishing  
19 Protection Alliance?

20 A           Yes, I am.

21 Q           Was CSPA a participant in the Bay-Delta hearings that  
22 have occupied the Board's time since 1987?

23 A           Yes, we have been.

24 Q           Are you generally familiar with the terms of the EPA

1 Water Quality Standards adopted December 14 last year and the  
2 State Board's Water Quality Plan adopted May 22, 1995?

3 A I'm not an expert, but I have reviewed them.

4 Q Is it your understanding that in general terms as  
5 reflected both in the December 15 Grand Accord or Water  
6 Quality Agreement among the three urban, agricultural, and  
7 environmental interest and the State Water Board Plan of May  
8 this year that freshwater flows into the Bay-Delta have been  
9 enhanced in dry years approximately 1 million acre-feet?

10 A Yes, that's a true statement.

11 Q And is it your understanding that the primary source  
12 of that enhancement flow would be the large reservoirs that  
13 feed water into the tributaries of the Sacramento-Bay-Delta  
14 system such as Shasta Dam, Folsom Dam, and the Feather River  
15 Dam?

16 A Yes, to a large extent.

17 Q Do you have information with regard to the relative  
18 utility of Folsom Dam reoperation as opposed to reoperation  
19 of Shasta Dam as a source of enhanced flows needed,  
20 particularly in the springtime for Delta smelt and other  
21 endemic species?

22 MR. SOMACH: Objection, Mr. Stubchaer. I have  
23 restrained myself to this point from making some objections,  
24 but I think it is appropriate for me to make them now in that

1 this particular witness was offered, as I understand, as a  
2 lay witness, not as an expert witness. The questions that  
3 have been asked of him are, I submit, questions that elicit  
4 expert responses in terms of the way facilities operate,  
5 hydrology studies and the like.

6           And in that context, I would like to formally object  
7 to provisions of Mr. Crenshaw's testimony, in particular,  
8 page 2, starting from the second full paragraph with the  
9 words "in particular" down through the last sentence in the  
10 first paragraph on page 3 of his testimony. I think that the  
11 Board will take a look at those paragraphs, they are entirely  
12 testimony of an expert nature and my understanding is that  
13 this witness has not been offered as an expert witness  
14 whatsoever.

15           MR. STUBCHAER:       Have you concluded with your  
16 objection?

17           MR. SOMACH:    Yes.

18           MR. STUBCHAER:   Mr. Volker.

19           MR. VOLKER:    Thank you, Mr. Stubchaer. A couple of  
20 responses: First of all, Mr. Crenshaw, as a lay person is  
21 entitled to apprise this Board of conclusions he has  
22 rationally reached based on his percipient observations as a  
23 participant in that water rights and water planning process.  
24 Although it is true that generally opinion testimony is

1 permissible only from experts. In this proceeding, that's  
2 modulated by two principles; first, that this is a forum for  
3 lay people to express their opinions about the  
4 appropriateness of water rights decisions as regards impacts  
5 on public trust issues.

6 And secondly, one other point, in this case, we have  
7 before the Board an individual who has participated in these  
8 water planning and water rights proceedings and can express  
9 views based on his rational perception as a percipient  
10 witness of the issues that were presented and discussed  
11 during that process.

12 We will be presenting an expert hydrologist who can  
13 certainly fill in any gaps that Mr. Somach may wish to pursue  
14 with regard to specific hydrologic issues.

15 MR. STUBCHAER: I am going to overrule the objection.  
16 The expertise or lack of expertise of the witness will be  
17 considered in the weight given to the evidence.

18 MR. VOLKER: Q After all that, Mr. Crenshaw, do you  
19 have in mind the pending question?

20 MR. CRENSHAW: A Would you repeat that for me?

21 Q That means I have to recall it. Let's approach it  
22 this way. As a participant in the Bay-Delta hearing process,  
23 are you familiar generally with the questions raised  
24 regarding the relative utility of Folsom reoperation as

1 opposed to Shasta reoperation in order to provide enhanced  
2 flows in the springtime for fish and wildlife purposes?

3 A I'm not an expert, as Mr. Somach has so pointedly  
4 pointed out, but I have been involved in that a little bit  
5 and there's some discussion about that reoperation of Folsom  
6 that would entail putting some more water down there so they  
7 could save that water in Lake Shasta because of the water  
8 temperature problems in the Lower Sacramento River below Lake  
9 Shasta.

10 Q And are you bringing to our attention the fact that  
11 the Upper Sacramento River below Shasta Dam has been  
12 designated as a critical spawning habitat for the endangered  
13 winter-run chinook salmon in the Sacramento system?

14 A Yes, that would be the water impact we're talking  
15 about.

16 Q And that spawning activity takes place in what time  
17 of the year?

18 A In the winter.

19 Q So, in short, Shasta Dam reoperation is constrained  
20 by the need to assure adequate cold water releases in the  
21 fall and winter in support of that necessary spawning  
22 activity?

23 A Yes, that's true. In the late fall and winter, we're  
24 talking about winter-run and we are also concerned about the

1 affect and impact that they may have on the regular fall run  
2 also. There was some discussion about that also.

3 Q And is the winter-run habitat in the Lower American  
4 River?

5 A I do not believe there are winter-run in the Lower  
6 American.

7 Q So, comparing the two sources of additional flows to  
8 meet the new Bay-Delta standards, is it true that Folsom Dam  
9 provides a greater opportunity to meet those standards to the  
10 extent enhanced flows are required in the spring?

11 A That's my understanding of what has been discussed,  
12 yes.

13 MR. VOLKER: I have no further questions.

14 MR. STUBCHAER: Thank you. Who wishes to cross-  
15 examine this panel? Please raise your hands. All right, I  
16 see only Mr. Somach and staff. Mr. Somach, how long do you  
17 anticipate cross-examination will go?

18 MR. SOMACH: It shouldn't go very long, certainly not  
19 more than 15 minutes.

20 MR. STUBCHAER: All right, we will do it before lunch  
21 then.

22 MR. SOMACH: I don't think there will be any problem  
23 in doing that.

24

**CROSS-EXAMINATION**

1 BY MR. SOMACH:

2 Q Mr. Crenshaw, can you describe your background for  
3 the Board, your educational background?

4 MR. VOLKER: Let me object. Mr. Crenshaw is  
5 presented as a lay witness. We have made no attempt to  
6 qualify him as an expert. His educational background, I  
7 think, is irrelevant, but I will permit the question. We  
8 have nothing to hide.

9 MR. STUBCHAER: Well, then, you are withdrawing your  
10 objection?

11 MR. VOLKER: I will permit this question. Let's see  
12 how far it takes us.

13 MR. STUBCHAER: I would say the line of questions in  
14 general would help the Board in knowing how much weight to  
15 put on the testimony.

16 MR. SOMACH: Q Which, of course, is the intent of  
17 the question.

18 A I went to high school. I went to Sacramento City  
19 College for two and a half years, then I attended Chico  
20 State. I did not graduate. My own experience as far as  
21 fisheries and that has come from what I learned over the past  
22 15 years as the President of the California Sports Fishing  
23 Protection Alliance. It has been pretty heavily involved in  
24 a number of different water and fisheries issues and it's

1 been an interesting process, and I have learned a lot.

2 Q           You have had no specialized training in the area of  
3 hydrology?

4 A           No.

5 Q           Have you had any specialized training with respect to  
6 the operation of large hydrologic water facilities such as  
7 those operated by the Bureau of Reclamation?

8 A           I'm not sure exactly what you mean by training. You  
9 are talking about formal schooling?

10 Q          Yes.

11 A          No.

12           Q Mr. Plasse, you indicated that the dam had been in  
13 place since what year?

14           MR. PLASSE: A I believe 1877 was the year.

15 Q          Isn't it true that there had been enlargements on  
16 that dam since 1877?

17 A          I believe so.

18 Q          And are you aware of the fact that the dam has been  
19 enlarged or was enlarged in the 1920s?

20 A          Yes, I am.

21 Q          And are you objecting or have you objected to PG&E's  
22 historic operation of the facilities?

23           MR. VOLKER: Let me interpose an objection. It's not  
24 clear whether, Mr. Somach, you are referring to an objection

1 in a formal sense, an objection lodged with FERC, or whether  
2 you are referring to an opposition or position taken in some  
3 less formal manner.

4 MR. SOMACH: Q Let's try both. Have you filed any  
5 formal objections with respect to PG&E's operations?

6 A No, I have not.

7 Q And in general, do you have objections with respect  
8 to PG&E's historic operations?

9 A Well, I feel the very term "historic" means that  
10 there's some record of how things have been taken care of and  
11 operated, and I guess that is one of my objections with this  
12 whole proceeding is that the term "historical" means there's  
13 evidence to ascertain what "historical" is, and if there is a  
14 record-keeping to that effect, then let's use that record-  
15 keeping to specify certain flow rates and lake levels.

16 Q How long has your family been at the lake?

17 A Since 1853.

18 Q And you certainly have been there since the 1920s?

19 A Yes.

20 Q Has your family and yourself operated since the  
21 1920s?

22 A Yes.

23 Q And how long have you observed personally lake  
24 levels?

1 A I was born at Silver Lake, 37 years.

2 Q You have any objections to the way the lake has been  
3 operated by PG&E during the period of your observations?

4 A During the number of years that I would have been  
5 mature enough to be concerned with that, no, I don't recall  
6 any.

7 MR. SOMACH: I have no further questions.

8 MR. STUBCHAER: Mr. Taylor.

9 **EXAMINATION**

10 BY MR. TAYLOR:

11 Q I am a little confused by Mr. Crenshaw's presence on  
12 the Sierra Club's panel. I would like to ask Mr. Crenshaw who  
13 is California Sports Fishing Protection Alliance'  
14 representative in this proceeding?

15 MR. CRENSHAW: A I'm not sure I understand. We have  
16 basically two, Mr. Baiocchi and Mr. Volker.

17 Q Thank you. Mr. Plasse, in your written testimony,  
18 you indicate that your family has a homestead at Silver Lake.  
19 Are you using the homestead in the sense that your family  
20 holds the fee title to certain acreage?

21 MR. PLASSE: A The fee title?

22 Q Yes, to the land.

23 A We do hold title to the land, but it was homesteaded  
24 or patented, I believe was the term, back in those days.

1 Q Thank you. Does your family directly divert and use  
2 water from Silver Lake on your property?

3 A No, it does not.

4 MR. TAYLOR: That's all the questions I have. Thank  
5 you.

6 MR. STUBCHAER: Anyone else on staff?

7 **EXAMINATION**

8 BY MR. LAVENDA:

9 Q I have one question for Mr. Plasse. Mr. Somach  
10 alluded to this, and I will ask the question directly. Have  
11 you or do you have knowledge of any of your family members  
12 maintaining a diary or record of lake levels at Silver Lake?

13 MR. PLASSE: A A diary or record of lake levels, no.

14 Q Some written documentation of the lake levels?

15 A No.

16 MR. STUBCHAER: Anything else? Do you have redirect?

17 MR. VOLKER: No, thank you.

18 MR. STUBCHAER: Let's see, are we going to handle  
19 these exhibits separately or combined -- we're going to have  
20 them combined.

21 MR. VOLKER: Fine.

22 MR. STUBCHAER: All right, thank you very much,  
23 gentlemen. We will now take a lunch break until 1:00 p.m.  
24 That is an hour and six minutes.

1 (Noon recess.)

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3

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**MONDAY, OCTOBER 30, 1995, 1:00 P.M.**

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MR. STUBCHAER: We will reconvene the hearing. Mr. Volker, is your expert panel ready to testify?

8

MR. VOLKER: Yes, Mr. Stubchaer. May I, with the Board's indulgence, permit Mr. Plasse to clarify an answer to one of the questions that was posed?

11

MR. STUBCHAER: Yes.

12

MR. VOLKER: During the recess, Mr. Plasse talked to his family and gathered some additional information that may be relevant to the Board. It certainly would help to clarify one of his answers.

16

MR. STUBCHAER: This is redirect then?

17

MR. VOLKER: Certainly.

18

**REDIRECT EXAMINATION**

19 BY MR. VOLKER:

20 Q

Mr. Plasse, during your testimony this morning you were asked a question respecting the historic operation of Silver Lake by PG&E, and I believe you testified that in your recollection during the period of time that you were an adult, you had no objections to the manner in which PG&E

1 operated the lake. Do you wish to clarify that answer?

2 A Yes, I do. I realize that I said from the time that  
3 I had become a mature individual, well, our situation with  
4 respect to my family's business, I'm here representing my  
5 family, but I do not have first-hand information of every  
6 summer during the time frame where I was starting my own  
7 family and my own business, and that occurred in 1975, which  
8 was the last summer that I spent the entire summer personally  
9 at Silver Lake. The business continued to operate, and I did  
10 not get reinvolved in the business until about four years ago  
11 when my parents decided to retire and either sell the  
12 property to pay for their retirement or continue the  
13 operation from a family standpoint.

14 During the time from 1975 until 1992, I was not  
15 living and residing at Silver Lake for four months out of the  
16 year, so I did not have available to me firsthand information  
17 as to what PG&E's historic operation of the lake was during  
18 that time frame.

19 I needed to clarify that since I'm representing my  
20 family and I don't have their years of experience here with  
21 me, I called and there apparently was at least one year that  
22 my family can recall sometime in the late 70s where the lake  
23 level was drained down prematurely and they do not have the  
24 exact year come to mind to them.

1 MR. VOLKER: Thank you, Mr. Plasse. I have nothing  
2 further, Mr. Stubchaer.

3 MR. STUBCHAER: Any questions on recross of Mr.  
4 Plasse? Staff? Okay, thank you very much.

5 Now the expert panel.

6 MR. VOLKER: Yes, thank you, Mr. Stubchaer. I would  
7 like to call now the expert panel representing the League to  
8 Save Sierra Lakes, Dr. George Clark, Dr. Mark Skinner, Dr.  
9 Robert Curry, and Ms. Carol Watt. And if this is  
10 permissible, Mr. Stubchaer, I would like to present the  
11 witnesses in the following order: Dr. Skinner, who is at my  
12 immediate right, Dr. Clark, Ms. Watt, and then Dr. Curry.  
13 Dr. Curry probably has the most testimony, certainly the most  
14 exhibits to offer.

15 MR. STUBCHAER: Fine, Mr. Volker. I would like to  
16 remind you and your panel we do have a 15-minute time limit  
17 for summarizing the written testimony and we don't need all  
18 of the written testimony read verbatim into the record.

19 MR. VOLKER: Thank you. Have you all taken the  
20 pledge?

21 (All indicated they had taken the pledge.)

22 **DIRECT EXAMINATION**

23 BY MR. VOLKER:

24 Q Mr. Skinner, would you state your name for the

1 record, please?

2 MR. SKINNER: A Mark Skinner.

3 Q Dr. Skinner, have you reviewed the testimony which  
4 has been marked as an exhibit in this proceeding?

5 A I have.

6 Q Does that reflect your testimony today?

7 A It does.

8 Q Would you care to summarize your testimony?

9 A I would like to elaborate on it a little bit.

10 Let me help by asking you a few questions to get  
11 going here. Could you explain briefly your familiarity with  
12 the unique assemblage of plants commonly referred to as the  
13 gabbro soil plant ensemble that lives in Western El Dorado  
14 County?

15 A Certainly. Let me just preface that by saying I am  
16 the statewide botanist for the California Native Plant  
17 Society, and in that capacity, I have studied the rare plant  
18 vegetation of California in every county of the State.

19 The so-called gabbro assemblage of rare plants is  
20 composed of eight species of plants, all of which are endemic  
21 to, known only from California, and five of those eight are,  
22 in fact, found solely or primarily on the outcrop of gabbro  
23 soils.

24 The size of that gabbro outcrop is approximately

1 40,000 acres, or something on the order of 70 square miles,  
2 and for all of these species of plants, their primary  
3 distribution only occurs on that gabbro outcrop. Four of  
4 them occur no place else in the world, and I have had an  
5 opportunity to study all these plants in the field, and I'm  
6 generally familiar with their ecological requirements.

7 Q           Could you identify the plants specifically and then  
8 describe their habitat requirements?

9 A           Certainly.       First is *Calystegia stebbinsii* or  
10 Stebbins morning glory. And this is a plant of very early  
11 successional gabbro chaparral, meaning that it typically is  
12 found only in disturbed areas of chaparral on the gabbro  
13 assemblage.

14 Q           What do you mean by disturbed areas?

15 A           By disturbed areas, I mean areas that have been  
16 subjected to natural disturbance such as fires. Fires are  
17 the factor which maintains chaparral vegetation in many parts  
18 of California. And in this case, fires are essential for  
19 disturbing the vegetation, resetting the ecological clock, as  
20 it were, reducing the height of vegetation, and *Calystegia*  
21 *stebbinsii* is one species which only occurs in its  
22 successional stage fairly soon after a fire.

23 Q           What happens to this plant if the biological clock is  
24 not reset?

1 A Well, what happens to it is that chaparral, which is  
2 dominated by manzanita, which grows eight to ten to twelve  
3 feet high and shades out Stebbins morning glory and a number  
4 of these other rare plants as well.

5 Q And if it is shaded out, what happens to it?

6 A Well, eventually what happens to it, some seeds are  
7 left as a reservoir in the soil and if the appropriate  
8 disturbance occurs within some unspecified amount of time,  
9 this species may come back, but if that disturbance is not  
10 introduced, then eventually it disappears from that site.

11 Q Please continue.

12 A So, in addition to Stebbins morning glory, there is a  
13 rare California lilac, *Ceanothus roderickii*, a very low-  
14 growing lilac which also is found in early successional  
15 phases of the gabbro chaparral.

16 There is a silk plant, the large-flowered silk plant  
17 which occurs also in open acres of chaparral. There are two  
18 species which are very restricted, one found primarily over  
19 near Pine Hill, and that's the Pine Hill flannelbush, and  
20 another one which is the *Galium Californicum* subspecies  
21 Sierra, which is also found in a slightly different habitat.  
22 It is found mixed with oaks, often in the under-story of  
23 Ponderosa pines, primarily around Pine Hill, and it is found  
24 only in fewer than ten places in the world, all on this

1 gabbro outcrop.

2           There are three others, one is the Bisbee rock rose,  
3 another is Laynes butter weed, and the final one is the El  
4 Dorado County mule ears.

5           All eight of these plants are found generally in  
6 early successional chaparral with the exception, as I said,  
7 of the Galium, the bedstraw, which is found in oak and pine  
8 wood lands.

9 Q           Your testimony expresses concern with regard to the  
10 survival of these species. What is the relationship between  
11 the proposed water development project that is the subject of  
12 the pending application and the likely survival or extinction  
13 of these species?

14 A           For sometime we have been concerned that urbanization  
15 in Western El Dorado County centered around Cameron Park and  
16 Shingle Springs is fragmenting the habitat for these eight  
17 species, and in fact, also fragmenting the unique chaparral  
18 vegetation that occurs on these gabbro soils.

19           By fragmenting, I mean taking these large blocks of  
20 fairly intact habitat and cutting them up into smaller pieces  
21 and there are a number of biological problems with this  
22 habitat fragmentation.

23           One is the so-called edge effect of that  
24 fragmentation through which weeds tend to move into the

1 habitat areas and degrade natural habitat. Edge effects  
2 extend to things like brush collecting by people, setting of  
3 fires at inappropriate frequencies for maintenance of the  
4 natural vegetation. Fragmentation also causes problems with  
5 movement of pollinators of the special plants in the gabbro  
6 soils and other places, and there is some scientific evidence  
7 that fragmentation can eradicate pollinators which can then  
8 reduce the reproductive capacity of the plants that are  
9 occurring in these habitat fragments.

10           So, we have been concerned about the possibility that  
11 most of this gabbro chaparral will, in fact, be fragmented  
12 because of urbanization which is not planned in accordance  
13 with biological principles.

14           In a large part, the reason that this growth has not  
15 happened so far is due to the lack of adequate water to  
16 support housing in that area.

17           Therefore, the connection is that if this permit is  
18 granted and that water is delivered, then growth presumably  
19 will occur and our primary concern is that the growth be  
20 managed in a biologically responsible way so that large  
21 blocks of habitat would be retained and that these large  
22 blocks of the habitat will be able to managed, and by that  
23 in this case, I mean will be able to be burned to maintain  
24 the rare species that occur in these blocks, and it is very

1 difficult to burn for management purposes small pieces of  
2 habitat, and very expensive.

3 Q           Dr. Skinner, in your professional judgement, if the  
4 40,000-acre gabbro soil habitat area that you described is  
5 developed as projected in the documents underlying this Water  
6 Rights Application, will any of these plants become extinct?

7 A           I think in the short term we will probably be able to  
8 maintain populations of some of these species in some of the  
9 habitat fragments, but in the long term, I think that some of  
10 them would go extinct as significant ecosystems contributors,  
11 significant components, because of lack of suitable habitat.

12 Q           Could you explain what you mean by that expression?

13 A           I think that with sufficient input of time and money,  
14 we could maintain populations of these plants, but it would  
15 be very expensive. I'm talking basically about gardening  
16 these things in small plots, whereas if we retain large  
17 habitat chunks, we can let nature do the management, and  
18 that's what I mean by that.

19 Q           Can you give us some examples of the scientific or  
20 genetic or medicinal value of plants that have come to the  
21 brink of extinction?

22 A           I can give you several examples which are directly  
23 relevant to the California economy, in fact. The first is  
24 the Northern California black walnut, which is literally the

1 foundation in the entire California walnut industry, and that  
2 is a 200 million-dollar a year industry. This is a  
3 foundation in the sense that the California black walnut is  
4 hybridized with other walnuts. It serves as a root stock for  
5 nameless walnuts which produce walnuts, the walnut meats for  
6 the California walnut industry.

7           Another example -- and I should point out that the  
8 Northern California walnut is now known for more than two  
9 populations in the world, one, a handful of mature trees in  
10 the Napa Valley hills, and a second population down by Walnut  
11 Grove along the Sacramento River, so that is a very, very  
12 rare plant which has had significant economic benefits for  
13 California. Now, I can't guarantee that any of these eight  
14 species would have significant benefit, merely that we don't  
15 know, and it seems problematic and foolish to take that  
16 gamble.

17           Let me give you another example --

18 Q           Before you do that, so that I am sure I understand  
19 your testimony, are you telling us that if those two small  
20 populations of Northern California black walnut had been  
21 eliminated by urban development, that the cornerstone for the  
22 California English walnut industry would have been lost?

23 A           I am telling you that, but in all honesty, it might  
24 have been possible to find another root stock for that

1 walnut, but that is the one that serves California best  
2 because that is the walnut that is native to these soils and  
3 adapted to the diseases and pathogens that occur in  
4 California.

5 Q Do you happen to know the value of that industry?

6 A It's about a 200 million-dollar a year industry.

7 MR. STUBCHAER: A minute and a half.

8 MR. VOLKER: Okay.

9 A Well, just to summarize, the vegetation of this  
10 gabbro outcrop is completely unique. It's not found any  
11 other place in the world. It contains a number of plants  
12 that are found no place else in the world and we don't know  
13 whether these plants would be of potential benefit to  
14 humanity or not, but there certainly is that strong  
15 possibility. A number of other California plants have, in  
16 fact, benefitted the economy, including Monterey pine, which  
17 is also a very rare California native plant, and it is the  
18 most wanted plant in the timber industry in the world and, in  
19 fact, the most in one way of thinking, valuable tree on  
20 earth.

21 MR. VOLKER: Do any of these plants you've identified  
22 have unique or horticultural value?

23 A A number of these plants have relatives that are used  
24 widely in the horticultural trade. One is the morning glory,

1 one is the California lilac, and one is the sunflower. So,  
2 they do have relevance and it is possible they do have some  
3 horticultural use, although it hasn't been found.

4 MR. VOLKER: Thank you.

5 MR. SOMACH: Mr. Stubchaer, if I could inquire of the  
6 Board, two inquiries. The first is that it was my  
7 understanding that testimony here was to summarize testimony  
8 that was in the written submissions. None of this  
9 information was in the written information, that is, the  
10 entire discussion of the English walnut and the impact upon  
11 the economy of California. That is not there.

12 Secondly, I just raise this issue in general with  
13 respect to this panel, that is, none of this testimony goes  
14 to the difference between the testimony that was presented at  
15 the prior four days of hearing and anything that is part of  
16 the amended applications that have been presented here.

17 This is, in fact, and I can go back if you would  
18 like, each one of these individual pieces of testimony, and  
19 indicate that, and in particular two of these witnesses  
20 actually testified last time also, and refer back to exhibits  
21 and testimony that they provided in the prior proceedings.

22 It was my understanding that this testimony was to be  
23 limited to the amount of occasions or impacts associated with  
24 the modifications of the project, not that a party were to be

1 able to provide testimony as if we had not already had four  
2 days of testimony on these issues.

3 MR. STUBCHAER: You are correct in stating that the  
4 purpose of the oral presentation is to summarize the written  
5 presentation. It is not to introduce new evidence.  
6 Regarding the exclusion of previous testimony, I'm going to  
7 ask Mr. Taylor to comment on that.

8 MR. TAYLOR: Mr. Somach is correct in the sense that  
9 we have asked the parties not to retestify to matters that  
10 were testified to in the 1993 hearing.

11 In reading through some of the testimony in the  
12 transcripts from the previous hearing, and the proposed  
13 testimony for this panel and others, it appears that a large  
14 portion of the evidence that is being offered today is a  
15 repeat of earlier testimony.

16 I would like to ask Mr. Volker if that's the case to  
17 have his witnesses identify those portions which are either  
18 previously testified to and let's exclude those, or identify  
19 the new portions and focus on that.

20 MR. VOLKER: We would have to take a recess to  
21 compare the previous testimony with the new testimony to  
22 identify the changes.

23 The purpose of presenting this testimony today is to  
24 provide the Board with a composite of the previous testimony

1 as updated today, so that in a single document and a single  
2 presentation, the Board would have the benefit of both. It's  
3 true that some of this is cumulative, but please bear in mind  
4 it would be difficult to make a cogent, well-organized  
5 presentation and not include some of the background materials  
6 and summaries of the context which occurred or was presented  
7 in the original testimony. So, although it may be cumulative  
8 in part, I think the benefit of having testimony presented in  
9 this way in a single document are significant and harm no one  
10 and do benefit the Board.

11 I would like to add specifically with regard to Dr.  
12 Skinner's discussion of the Northern California black walnut,  
13 that was offered by way of illustration of the potential  
14 impact when that species becomes extinct.

15 It is true the testimony does not mention that  
16 particular species, but it does address the issue of  
17 extinction and I think it is useful for this Board to have  
18 that additional background presented.

19 MR. STUBCHAER: I would say from the point of view of  
20 fairness, the number quoted, the 200 million-dollars,  
21 whatever it is, would not be known to the other parties, so  
22 they haven't had a chance to research to see if that is a  
23 reasonable number. The oral presentations should be pretty  
24 much limited to the written submittals and with that and our

1 15-minute time limit, I will allow you to proceed even though  
2 it may overlap something that was done back in the previous  
3 hearing.

4 MR. VOLKER: Thank you. Our next witness is Dr.  
5 George Clark.

6 **DIRECT EXAMINATION**

7 BY MR. VOLKER:

8 Q Dr. Clark, would you state your name for the record?

9 MR. CLARK: A George M. Clark.

10 Q Dr. Clark, did you have an opportunity to review your  
11 testimony which has been marked as SCLDF Exhibit 95 GC-2 in  
12 this proceeding?

13 A Yes, I have.

14 Q Does that accurately reflect your testimony?

15 A Yes, it does.

16 Q Would you care to summarize your testimony?

17 A Sure. I have developed over the years a fairly  
18 substantial familiarity with the gabbro soils and endemic  
19 plants, partially through participation in what was called  
20 the Rare Plant Advisory Committee that guided the Planning  
21 Department of El Dorado County as they attempted to decide  
22 how to address the problem of plants in the path of the  
23 development.

24 I participated this year in a forum known as the

1 critical needs process that was put together by the U. S.  
2 Fish and Wildlife Service and the Bureau of Reclamation to  
3 address the problems that might be caused due to specific  
4 uncommon species by availability of water in the next three  
5 to five years.

6           I have, for a number of years, gone out into the area  
7 and photographed the plants. I have led field groups into  
8 the gabbro soils and endemic plants to introduce other people  
9 to the interesting ecosystem. And our organization and  
10 myself as well have developed a natural communities  
11 clarification system that is attempting to provide  
12 quantitative data to identify such communities as the gabbro  
13 soils chaparral so that preservation of these plant  
14 assemblages can be accomplished without having to refer to  
15 specific plants, so I have a fairly extensive background in  
16 this area.

17           Perhaps the first thing I might do is describe the  
18 critical needs process. This was put together because of the  
19 interim authorization of 67 water contracts by the Central  
20 Valley Project, and a critical needs forum addressed 8  
21 different assemblages of uncommon species, and the purpose  
22 was to define if these species had critical needs and  
23 critical needs were defined as needs which, if there were  
24 water made available over the next three to five years, these

1 species would either become extinct or the availability of  
2 water would preclude their recovery. And it was interesting  
3 that only one of the eight sets of species was concluded to  
4 have critical needs as so defined.

5           Mr. Wayne White, State Director for the U. S. Fish  
6 and Wildlife Service, summarized the findings of eight  
7 workshops that were held. He said that only the El Dorado  
8 gabbro soils assemblage of rare plants had critical needs as  
9 defined by this process. That is, that the immediate  
10 availability of water in the next three to five years in  
11 Western El Dorado County might well lead to extinction or  
12 preclude the recovery of one or several of the eight uncommon  
13 plants on the gabbro soils outcrop, and I fully concur in  
14 that assessment.

15           As a participant in the Rare Plant Advisory  
16 Committee, we worked very long and hard with experts from  
17 Fish and Game and our own organization, the Native Plant  
18 Society, and also developers and landowners, many people, to  
19 try to establish a preserve system that was thought by all to  
20 be something to ensure the viability of the plant species and  
21 allow development to go around them if there were adequate  
22 corridors maintained between the preserves.

23           The Board of Supervisors, at the time this was  
24 presented to them, adopted four of the five preserves that

1 were recommended and did not adopt or propose for adoption  
2 the fifth very critical preserve in the southern part of the  
3 gabbro soils outcrop where a few of the rare plants really  
4 find their greatest abundance.

5           In the intervening time since the Board adopted the  
6 principle of the four preserves, they have made no effort  
7 really to establish or fund these preserves or to provide  
8 management for the preserves that they did accept. Two other  
9 organizations, the American River Land Trust and the  
10 Department of Fish and Game have made considerable efforts in  
11 this regard, although they have very little to show for it.

12           The present recently certified Final Supplemental  
13 EIR for the El Dorado Irrigation District Application defers  
14 all of its considerations of impacts to the rare plants to  
15 the County General Plan. The General Plan that is proposed  
16 for adoption states that they will not establish the critical  
17 Southern preserve in El Dorado County and this is the reason  
18 that the Fish and Wildlife Service and the Bureau of  
19 Reclamation apparently concluded that there are critical  
20 needs as defined by their possibility of becoming extinct if  
21 water is available in that area in the next three to five  
22 years.

23           I think most people familiar with Western El Dorado  
24 County would be able to tell you that the site for the

1 Southern preserve would not be there if water had been freely  
2 available in Southern El Dorado County in the last ten to  
3 fifteen years. That site would have been developed long ago.

4           So, the availability of water is of fairly vital  
5 importance with respect to the viability of these plants.

6 Q           Thank you. You mentioned that you concur in Wayne  
7 White's conclusions that one or more of these species would  
8 become extinct if urban development proceeds as projected.

9 Can you explain first why you came to that conclusion?

10 A           Well, in part because the Southern Preserve site is  
11 almost the only area south of Green Valley Road which sort of  
12 bisects the gabbro soils area, that is suitable for proper  
13 management. It is the only large site where we can have the  
14 20 to 30 years' fire management that Mark Skinner referred  
15 to. I sort of lost the thought of where we were going.

16 Q           You mentioned that the Fish and Wildlife Service  
17 State Director, Wayne White, had concluded that one or more  
18 species of this unique assemblage of gabbro soil species  
19 would become extinct if urban development proceeded as  
20 projected, and the question was, could you elaborate on the  
21 reasons why you concur with Mr. White?

22 A           The availability of a managable preserve is certainly  
23 one.        The other is distinct lack of sympathy for the  
24 preservation of endangered species on the part of political

1 bodies entrusted with decision making in El Dorado County at  
2 present.

3           For example, Jim Upton, who is the longest tenured  
4 member of the Board of Supervisors, early on in the hearing  
5 process for establishing the preserves, said that revenue  
6 funds derived --

7           MR. SOMACH: Now, we are moving into hearsay. None  
8 of this is in the testimony that was submitted in writing.

9           MR. STUBCHAER: Sustained.

10          MR. VOLKER: We will withdraw that last sentence. I  
11 think we need to try to keep to the parameters of the written  
12 testimony. If you would like to summarize the basis for your  
13 conclusion, perhaps speaking to the geographic needs of this  
14 unique assemblage of plants for long-term preservation and  
15 the regulatory mechanisms or the acquisition programs that,  
16 in your view, would be necessary to assure that that  
17 geographic preserve requirement is met.

18 A          Early on, representatives of the Native Plant  
19 Society, the California Department of Fish and Game and the  
20 Fish and Wildlife Service and a number of other agencies with  
21 distinct botanical backgrounds and knowledge of the needs of  
22 plant species, met and came up with the concept of a preserve  
23 system which would have large northern, central, and southern  
24 components, because none of these preserves could have all

1 eight plant species, for one thing. They are distributed  
2 such that there is no single preserve site that will preserve  
3 all eight species, so the concept of a large northern  
4 preserve centered in the Salmon Falls area, a central  
5 preserve in the Pine Hill area, and a southern preserve in  
6 the Shingle Springs area, was deemed fairly essential in part  
7 also to preserve the biological variability of individual  
8 species, which is the genetic makeup of the species is very  
9 important.

10           Could you explain why that variability is important  
11 to the long-term survival of the species?

12 A           Actually Mark could provide a better description of  
13 this, but it is because in response to different micro-  
14 habitats, individual plants develop capabilities to withstand  
15 that habitat and the pathogens of things that are found there  
16 that they have to contend with, and the more of the range of  
17 the plants that can be preserved, the better the plant is  
18 equipped to interaction between these sites by pollinators  
19 and things like that to withstand the forces that they need  
20 to contend with to survive.

21 Q           So, in summary, is it your conclusion that all three  
22 preserves should be established and protected permanently in  
23 order to assure the survival of these eight species?

24 A           Yes, the three large preserves do definitely need to

1 be established and protected permanently in order to assure  
2 their viability. I should mention there are also two  
3 satellite preserves which are already available on public  
4 land that are part of the preserve system, but the central,  
5 northern, and southern preserves are the critical ones that  
6 are essential if the species are to survive, yes.

7 Q And in your judgement, are there presently mechanisms  
8 in place which would assure the establishment and long-term  
9 protection of those three proposed preserves?

10 A No, definitely not.

11 MR. VOLKER: Thank you.

12 Mr. Stubchaer, we would like to call as our third  
13 witness Carol Watt. Carol Watt is a planner.

14 **DIRECT EXAMINATION**

15 BY MR. VOLKER:

16 Q Ms. Watt, have you had an opportunity to research  
17 your testimony which has been marked as an exhibit in these  
18 proceedings?

19 MS. WATT: A Yes, I have.

20 MR. SOMACH: Mr. Stubchaer, I want to make -- I know  
21 that I have made a general objection of the testimony being  
22 offered here by this panel. I want to make a specific  
23 objection to this particular testimony.

24 This testimony focuses upon El Dorado County Water

1 Agency's Exhibits 22, 25, 29, and 30, all of which were dealt  
2 with in the last hearing. And in particular, if the Chair  
3 will remember, we spent time not only on direct and cross-  
4 examination, but this information in these exhibits was also  
5 the subject of a lot of rebuttal testimony, and in fact, a  
6 lot of acrimony and a lot of discussion of the exhibits at  
7 that time. Moreover, to the extent that the testimony  
8 focuses on the general planning process, and in this regard,  
9 if the Chair would look at paragraphs 6 through the end of  
10 this document, one will see that not only does it debate and  
11 discuss exhibits in testimony that were previously focused on  
12 in this hearing process, but in addition to that the primary  
13 focus of the discussion is attacking the sufficiency and  
14 adequacy of what the general planning process is doing with  
15 respect to these documents.

16           And on those two bases, I object to this testimony.

17           MR. STUBCHAER: Mr. Somach, would you repeat the  
18 page of this testimony that you are referring to?

19           MR. SOMACH: In particular, I was referring in the  
20 initial portions of my comments to paragraphs in number 2  
21 through 5 and that those rely upon a discussion of Exhibits  
22 22, 25, 29, and 30, all of which were the subject of previous  
23 testimony which the Sierra Club and its witnesses took a  
24 great deal of time dealing with, in which a great deal of

1 testimony was dealt with, and then if one looks at 6 through  
2 the end, you will see that those are discussions of a  
3 planning process. In fact, I stopped counting the number of  
4 times that I saw this in those Draft 2010 Plan, General Plan,  
5 and other types of references. That is all it talks about in  
6 that context. Occasionally, there is an oblique reference to  
7 something else, but all you have to do is just spend a moment  
8 glancing at those things as opposed to what I did in  
9 attempting to read through those things, and you find they  
10 are all outside of the proper scope of these hearings.

11 MR. TAYLOR: To be more specific, why is it improper  
12 to discuss or evaluate the planning process?

13 MR. SOMACH: The County Planning Process?

14 MR. TAYLOR: Yes.

15 MR. SOMACH: Because it is a process that's ongoing  
16 by the County of El Dorado. The County has made no final  
17 terms or conclusions with respect to that planning process,  
18 and attacking that planning process prior to the time there's  
19 any finality in that process just simply is speculative and  
20 beyond the scope of this Board.

21 To the extent that the Sierra Club and the witnesses  
22 have problems with that planning process, they may  
23 participate in it, and to the extent that they have problems  
24 with any final conclusions or determinations made in that

1 planning process, they may challenge those judicially.  
2 Again, this appears to be a collateral attack with respect to  
3 that process. Now, to the extent that they have disagreement  
4 with the fundamental aspects of that process, to the extent  
5 that they are population projections or other types of  
6 information, my first objection is that we went over all  
7 that, that nothing new has been added to the record with  
8 respect to any of those issues, that they were the subject of  
9 a great deal of direct and cross-examination and rebuttal  
10 testimony and final briefing, and those were my references to  
11 Exhibits 22, 25, 29, and 30, which are the only exhibits that  
12 are referred to in this brief. The objections I have  
13 articulated are two objections, but I believe they  
14 interrelate one with the other.

15 MR. TAYLOR: Mr. Stubchaer, I am inclined to agree  
16 with both Mr. Somach's objections. It appears that the first  
17 paragraphs, 2 through 5, do indeed deal with matters taken up  
18 at the 1993 hearing, and it seems to be pretty much a rehash  
19 with regard to the latter, paragraph 6 to the end.

20 It deals with the planning process which is, in fact, ongoing  
21 and has not reached completion and to levee criticisms at it  
22 while the process is still ongoing, I think would be  
23 evidence, if received, would be largely valueless to the  
24 Board because what we would have to be bound by in any event

1 sometime in the future is the final document, if it were  
2 before us, and we couldn't rely on something of this  
3 transitory nature in making findings and recommendations.  
4 Staff doesn't rely on something like that in making  
5 recommendations to the Board, at least for findings on how to  
6 proceed on these applications.

7 MR. STUBCHAER: Mr. Volker.

8 MR. VOLKER: Thank you, Mr. Stubchaer. I believe  
9 that the testimony as presented properly integrates past and  
10 current documents much like El Dorado's Environmental  
11 documents make frequent reference to the 1993 Final EIR, for  
12 example.

13 So, too, Ms. Watt's testimony makes frequent  
14 reference in context to the Draft Supplemental EIR. For  
15 example, on page 2, the last paragraph discusses the Draft  
16 Supplement to the EIR and quotes from it.

17 On page 3 at the top again it cites the Draft  
18 Supplement to the EIR. Again, on page 4 at the top it cites  
19 the Draft Supplement EIR and so forth. So, surely it cannot  
20 be an objection that Ms. Watt attempted to integrate the  
21 existing context with the new plans and new environmental  
22 proposals and environmental reviews that are now under way.

23 I think, actually, this makes for a more  
24 comprehensive and understandable presentation.

1           If reference to previous documents is an objection,  
2 then I would think all of the El Dorado documents, since they  
3 all refer back to documents in existence in 1993, would have  
4 to be stricken as well.

5           With regard to the larger objection, that planning  
6 has no role in this Board's consideration of this Water  
7 Rights Application, I think there are three points that  
8 should be made.

9           First, the project proponent has made reference to  
10 the Department of Finance growth projections as a basis for  
11 its assertion that there is a compelling public interest in  
12 providing water to meet future growth. Absent that  
13 predicate, I don't believe the Board would have any evidence  
14 before it to support approval of water rights applications  
15 which have the documented adverse environmental impacts that  
16 have been identified in testimony before the Board.

17           Secondly, I think that the Board's duties under the  
18 Public Trust Doctrine come into play here. Surely the  
19 impacts of the growth that would be unleashed by the  
20 availability of this water implicates public trust values and  
21 have to be considered in that context. And finally, this  
22 Board has broad responsibility to evaluate the environmental  
23 impact of this project even apart from the public interest  
24 context, and the environmental impacts are both direct and

1 indirect.

2           While it is true that the land use development is not  
3 a direct effect of a water rights appropriation, I think  
4 everyone acknowledges that it is not only the purpose, but  
5 the certain indirect effect of the water rights application,  
6 and therefore, should not be ignored.

7           Just as Ms. Watt's testimony was permitted in 1993  
8 because it is relevant on those three grounds, I think so  
9 should it be allowed now.

10           MR. STUBCHAER: I am going to sustain the objection  
11 on the basis of what Mr. Taylor quoted us.

12           MR. VOLKER: Can I have some clarification? Is it  
13 the ruling of the Board that this testimony is stricken on  
14 the grounds that it is based only on past documentation  
15 or is it --

16           MR. STUBCHAER: To the extent it was discussed at the  
17 1993 hearing -- there was extensive direct and cross-  
18 examination, and the fact that the planning process is  
19 ongoing, it is excluded. If you want to comment about the  
20 changes between the Draft and the Final EIR, that would be  
21 appropriate.

22           MR. SOMACH: Mr. Stubchaer, on that point, I just  
23 want to indicate that from Ms. Watt's own testimony upon  
24 which at page 2 of that testimony on the face of her own

1 document, she indicates that the Draft Supplement to the El  
2 Dorado County Water Agency's previous EIR confirms this fact.  
3 In its Executive Summary, the DEIS states that the proposed  
4 alternative 1 B would result in the same significant and  
5 unavoidable growth-inducing secondary impacts as disclosed by  
6 the previously certified EIR, including, and she goes on to  
7 say specifically what that is.

8           The point is that there's nothing between the new  
9 environmental documentation and the old environmental  
10 documentation, it just simply, as it ought to, if there had  
11 been changes, then perhaps that would be a proper focus of  
12 the testimony here, but the fact is there has been no  
13 modification, the same conclusion in the document.

14           MR. VOLKER: May I be heard briefly, Mr. Stubchaer?

15           MR. STUBCHAER: Yes.

16           MR. VOLKER: I had a question. I am a little  
17 confused. My understanding was that the Final Supplement to  
18 the EIR was certified on Monday, October 23. Ms. Watt's  
19 testimony was timely submitted on October 2, which preceded  
20 the certification of the Final. Obviously, she could not  
21 have addressed the difference between the Draft and the Final  
22 in her testimony if the Final was not available, and indeed,  
23 I think it is improper for the Board to consider the Final  
24 since it was not timely submitted.

1           With regard to the transitory nature of the planning  
2 process in El Dorado County, that is relevant, and Ms. Watt  
3 is not telling you that whatever brief intersection of the  
4 planning concept and the planning language may presently be  
5 considered by the County as a likely future scenario is  
6 wrong. She is simply saying there is no certainty and that  
7 the growth projections that have been employed in the  
8 application don't withstand close scrutiny. I think those are  
9 both appropriate observations of the planning project which  
10 should be considered by this Board.

11           MR. STUBCHAER: Mr. Taylor.

12           MR. TAYLOR: Mr. Stubchaer, I found Dr. Watt's written  
13 testimony very interesting. Be that as it may, most of it  
14 revolves around a planning process which is ongoing and which  
15 has not been completed and the staff could not use this on  
16 the basis of proposing findings for the Board.

17           All the arguments advanced by Mr. Volker in terms of  
18 projected growth, direct or indirect impacts of growth on  
19 public trust, and the duty to evaluate project impacts, those  
20 arguments are good, but nevertheless, they come back to  
21 criticism of a document which is in draft form and it's very  
22 speculative to assume what that document is going to be when  
23 it is finally adopted.

24           I don't see how the Board can make any real use of

1 this testimony.

2           MR. VOLKER: The only point I would add to that is I  
3 agree with Mr. Taylor to the extent that he observed that the  
4 Board normally would consider these kinds of impacts, but Ms.  
5 Watt is simply pointing out that what is sauce for the goose  
6 is sauce for the gander. If it is inappropriate to speculate  
7 about future growth, future impacts, El Dorado likewise  
8 should not be heard to speculate and have this Board rely on  
9 it.

10           Ms. Watt is simply saying the planning process is  
11 highly speculative at present.

12           MR. SOMACH: One of the artful things that is  
13 happening here is also some confusion over the totality of  
14 the objection. We did submit population projections upon  
15 which we were relying in this process, which we believe the  
16 Board can validly rely upon.

17           The point we are making is, that was already dealt  
18 with in its entirety, both in terms of direct, cross-  
19 examination, as well as rebuttal testimony, on top of  
20 everything else, that nothing has changed in that regard in  
21 terms of our reliance, that also the quote I had was not  
22 between the quote that I made from Ms. Watt's testimony was  
23 not a quote referring to changes between the Draft Supplement  
24 to the EIR and the final supplement to the EIR, but a quote

1 with respect to the Certified EIR that was the subject of all  
2 those past hearings.

3 All that the new document says is there is no change,  
4 we didn't do anything, we are relying upon the same  
5 documents, the same population projections, the same  
6 exhibits, 22, 25, 29, and 30 that we relied upon back then.

7 It is not a situation where they have been not  
8 allowed to cross-examine, and produce their own evidence on  
9 population projections. They have done all that. This part  
10 of the objection goes to the fact they ought not be able to  
11 do it all over again when nothing has changed, and that is a  
12 response to a great deal of extraneous type of explanation  
13 Mr. Volker has provided.

14 MR. STUBCHAER: Mr. Volker.

15 MR. VOLKER: Mr. Stubchaer, a quick response. I agree  
16 with Mr. Somach that nothing has changed on the part of the  
17 El Dorado County planning process. It is completely up in  
18 the air. Ms. Watts is merely saying she agrees that it is  
19 completely speculative and up in the air. Surely we should  
20 be permitted to say that.

21 MR. STUBCHAER: Didn't you say it previously in 1993?

22 MR. VOLKER: But we are saying as of '95 nothing has  
23 changed, and she has given examples from the relevant 1995  
24 documents to make that point.

1 MR. STUBCHAER: If nothing has changed, then why do  
2 we have to hear new testimony on it?

3 MR. VOLKER: Purely for the point of showing that the  
4 comments she made then apply today as well.

5 MR. STUBCHAER: It is already in the record. Mr.  
6 Taylor, do you have any more comments?

7 MR. TAYLOR: No.

8 MR. STUBCHAER: All right, the ruling will stand.

9 MR. VOLKER: Just so I am clear, you are not going to  
10 permit Ms. Watts to testify today; is that true?

11 MR. STUBCHAER: Yes.

12 MR. VOLKER: Our fourth witness is Dr. Curry. Dr.  
13 Curry is a professor of hydrology and geology, recently  
14 retired from the University of California at Santa Cruz.

15 **DIRECT EXAMINATION**

16 BY MR. VOLKER:

17 Q Dr. Curry, would you state your name for the record?

18 MR. CURRY: A Robert Curry.

19 Q Dr. Curry, have you had an opportunity to review your  
20 testimony which has been marked as an exhibit in this  
21 proceeding?

22 A I have.

23 Q Does that exhibit accurately reflect your testimony  
24 today?

1 A           It does.

2 Q           Would you care to summarize your testimony?

3 A           Well, I think the written testimony stands.

4 Q           All right.    Let me direct your attention to some  
5 specific areas.    Have you had an opportunity to review El  
6 Dorado Exhibit 78 entitled, Analysis of El Dorado Irrigation  
7 District's Supplemental Water Requirements from PG&E sources  
8 dated March 23, 1994?

9 A           I have.

10 Q          Do you have that document in front of you?

11 A          Yes.

12 Q          Addressing your attention to the section entitled,  
13 Operating Criteria and Assumptions, Section VI commencing on  
14 page 16?

15 A          I have that before me.

16 Q          I would like to invite your attention to page 17 of  
17 this document.    On page 17, under Section VI.2 it states that  
18 the hydrologic period from 1921 to 1992 was evaluated for  
19 preparation of projected operational parameters.    Doctor, in  
20 your professional judgement, was that an appropriate  
21 historical period to employ as the basis for developing  
22 projections of hydrologic parameters?

23 A          Well, it was the only period for which they had a  
24 hard record to permit them to develop this model, but as I

1 stated in my 1993 testimony, it does not represent the range  
2 of conditions that would most probably be expected to occur.

3 Q           Is there a more appropriate period of time in your  
4 judgment that could have and should have been employed for  
5 that purpose?

6 A           Well, in my opinion, it would have been better to  
7 utilize the entire historic period of record for the South  
8 Fork American River flows so that we can reconstruct the  
9 magnitude of the droughts that would be likely to occur such  
10 as that of 1918 through 1920.

11 Q           What, in your view, is significant about the period  
12 1918 to 1920?

13 A           Well, that is the period of time which had a drought  
14 that was significantly greater in cumulative effects than  
15 that of 1977 which has been used as a worst-case year for  
16 this particular model.

17 Q           Now, I noticed that you are using a three-year period  
18 rather than a one-year period that was used in the  
19 environmental documentation for that project. Will you  
20 explain why you would recommend use of a longer period in  
21 this context?

22 A           Well, it's standard practice in this kind of  
23 operational hydrology and modeling to use an overlapping  
24 longer period of record that reflects the antecedent

1 conditions in the watershed, because the amount of runoff in  
2 a given year is not simply a function of the amount of snow  
3 in that year, but it is a function of the amount of rainfall  
4 and snow in prior years also.

5           And a three-year overlapping period for the South  
6 Fork American River with this particular kind of geology is,  
7 in my opinion, the minimum kind of period necessary to look  
8 at. The issue here is that the upper portion of the South  
9 Fork American River is made up of very porous volcanic rocks  
10 that absorb a great deal of precipitation and store that  
11 precipitation from year to year so that there is a base flow  
12 release into the streams that is a function of the antecedent  
13 years as well as a given year's snow water content.

14 Q           What is the relationship between the three-year  
15 period of drought that you selected as the appropriate  
16 benchmark and the drought worst-case scenario selected by the  
17 project applicant, 1977?

18 A           Well, the worst-case drought scenario that we should  
19 reasonably be looking at here in California, and this is an  
20 issue for all water resource issues, not just the South Fork  
21 American River, is one that's about 30 percent more severe  
22 than the 1977 drought.

23 Q           Is that true if one takes into account the three-year  
24 period that includes 1977?

1 A Yes, the two years prior plus that year.

2 Q I would like to direct your attention to Section VI.3  
3 on page 17 which makes reference to the existing U. S. Bureau  
4 of Reclamation contracts. I note that the paragraph states  
5 that it is assumed that 4,000 acre-feet annually will be  
6 available in years similar to 1977. Do you believe that's a  
7 safe assumption for the analysis conducted by El Dorado?

8 A No, I do not.

9 Q Why not?

10 A Well, first of all, we know that in years like 1992  
11 they released less than 4,000 and released only 2,400 some-  
12 odd acre-feet to the project. And further, we have the very  
13 significant issues of the changes in flow requirements and  
14 flow releases to protect Delta issues and to protect fishery  
15 and water quality issues, water temperature issues, within  
16 the South Fork American River itself. Those new regulations  
17 have been imposed subsequent to 1992 and so we should expect  
18 that a more reasonable firm yield would be 2,000 or less.

19 I have just today had an opportunity to read through  
20 the contracts between El Dorado Irrigation District and  
21 Folsom and find that they, indeed, do clearly state that  
22 these acre-feet allocations are subject to biological and  
23 fish release concerns.

24 Q By new constraints you are referring to the Water

1 Quality standards adopted by EPA in December 1994 of the Bay-  
2 Delta Water Quality Plan this Board adopted in May 1995?

3 A Correct.

4 Q I would like to refer you to page 20 of this exhibit  
5 on which appears Section VII entitled, Results of the  
6 Operational Analysis, and specific to the first sentence  
7 which states, Computer simulation of the EID system operation  
8 has been run for demand levels from 1995 through 2013. Dr.  
9 Curry, in your professional judgment, does that sentence  
10 imply El Dorado Irrigation District's consultants developed a  
11 computer model to project hydrologic conditions?

12 A Yes, the words, "computer simulation" means that  
13 there has to be -- you don't just turn a computer on and ask  
14 it to simulate. You have to give it a set of instructions  
15 and that set of instructions is indeed a form of a model.  
16 You have to tell it to balance this against this against  
17 this. That is a model.

18 Q Have you been given a copy of that model for your  
19 use?

20 A No, I have not had that shared with me. I have had  
21 some of the raw input data shared with me, but that is  
22 publicly available data, but despite repeated requests, I  
23 have not been able to get the actual operational model.

24 Q Has your analysis been hampered by virtue of the fact

1 that that model has not been made available to you?

2 A Yes.

3 Q I would like to direct your attention to Section  
4 VII.2, Summary of Findings, and in particular, the reference  
5 to two different year types that appear, the year 1977, which  
6 I believe you addressed previously as a year that is not the  
7 most critical year if three-year periods are taken into  
8 account, and then in the second bulleted paragraph, I note it  
9 makes reference to a representative year such as 1975.

10 In your professional judgement, is 1975  
11 representative of a hydrologic year in the South Fork  
12 American River system?

13 A In my opinion, 1975 is not a good year to pick as  
14 representative. From my testimony, I had a figure RC 33,  
15 which illustrates the April 1 snow water content for the  
16 entire South Fork American River watershed, and what you can  
17 see from that is the 1975 water year is, in fact, wetter than  
18 the majority of the years. There are ten years of equal or  
19 wetter conditions within this 50-plus year period of record,  
20 and there are 42 years that have lower precipitation, and  
21 when you compare that, and when you compare that for the  
22 three year running average, the result is even more dramatic,  
23 that is, the antecedent moisture amplifies it. So, it is  
24 effectively a 20-percent chance return.

1 I constantly fall back on a frequency, duration and  
2 magnitude analysis in my analysis of what is typical, what is  
3 representative, how do we develop an operational model.

4 Q Dr. Curry, have you had an opportunity to review  
5 Table 7-5 to Exhibit 78?

6 A Yes, I have.

7 Q Do you recall that there has been testimony  
8 reflecting the allocation of water from Caples Lake and Lake  
9 Aloha to El Dorado Irrigation District's existing consumptive  
10 uses as part of the so-called 1919 contract entitlement?

11 A I do.

12 Q In your opinion and professional judgment, is it  
13 appropriate for the purpose of this table to assume a  
14 consumptive water right to Caples and Aloha Lakes?

15 A It is not. One might attempt to argue that so long  
16 as you have a consumptive right to one lake, you can switch  
17 them back and forth, but in the language I read for that 1919  
18 right, the utilization --

19 MR. SOMACH: Objection. I object to the question on  
20 the ground it is asking for a legal conclusion by a witness  
21 that is not competent to testify in that regard.

22 MR. VOLKER: I think the witness is amply qualified  
23 to address what, in his professional judgment, is a prudent  
24 methodology for developing a firm yield calculation and for

1 projecting future operating parameters.

2 MR. STUBCHAER: I will overrule the objection and  
3 state again that when it comes to a legal conclusion, the  
4 qualifications of a witness will be considered.

5 Mr. Volker, you have about a minute and a half.

6 MR. VOLKER: Q And similarly, with regard to that  
7 tables' use of an assumed reservoir release from Silver Lake  
8 under the 1919 contract, the 5,636 acre-feet annually, is  
9 that an appropriate assumption for this model?

10 MR. SOMACH: Same objection.

11 MR. STUBCHAER: Same ruling.

12 A If I were developing the model, I would not try to  
13 include something that I was told was not includable.

14 MR. VOLKER: Q Dr. Curry, lastly, in your  
15 professional judgement, can this water project be operated in  
16 a manner which protects existing recreational and fish and  
17 wildlife uses of Caples, Silver, and Aloha Lakes?

18 A This project can be operated with lesser demand  
19 levels in a way that does protect those lakes, but at the  
20 project demand levels, it cannot be operated in such a  
21 fashion that it would not damage those recreational uses.

22 Q Can you give us an example of the evaluation you have  
23 performed which demonstrates that fact?

24 A Yes. In the past several years I have been working

1 with a group trying to develop a negotiated settlement on  
2 this issue and --

3 Q Without divulging the discussions of that settlement  
4 process, could you direct us to the exhibit, since we are  
5 almost out of time?

6 A Exhibits 30 and 31 both show an attempted way of  
7 looking at the lake such that one could develop an  
8 operational model that we can go into at other times, but my  
9 operational model does allow the utilization of water from  
10 Caples Lake. It simply allows the use of less water that will  
11 ensure the recreational and fishery benefits of the lake.

12 MR. VOLKER: Mr. Stubchaer, I notice the red light is  
13 blinking. However, I am also aware that you have very  
14 courteously allowed many of the presenters to use more time  
15 than the 15-minute limit where good cause is shown, and I  
16 would request similar indulgence at the present time. I  
17 think Dr. Curry has much to offer the Board, and it would be  
18 helpful if we could all see those exhibits projected and have  
19 a brief explanation given of them.

20 MR. STUBCHAER: I am more lenient on cross-  
21 examination than on direct, but how much time to you require?

22 MR. VOLKER: Two minutes.

23 MR. STUBCHAER: Granted.

24 A This is a graphic figure representing the variation

1 in Caples Lake level.

2 MR. TAYLOR: You are referring to SCLDF RC-30?

3 A Thank you, Mr. Taylor. And what we have attempted to  
4 do is to develop an operational model that ensures that the  
5 lake refills every year. That gives us enough water to  
6 ensure that the lake refills based upon the historical  
7 variation. And the number that we came up with was a  
8 proposed minimum pool of 7,944.6.

9 SCLDF Exhibit RC-31 shows that in more detail and,  
10 basically, it allows us approximately 11,000 acre-feet off  
11 the top of the lake to be utilized in a fashion that makes  
12 water for the applicants and simply not draw the lake lower  
13 than that to ensure that it will refill.

14 To develop a proper operational model, we would base  
15 this on the full variation in lake levels that occurs.

16 This is a plot taken from my data tables which, I  
17 think, were Exhibit 31. I can't remember which, but if we  
18 simply look at the variation in lake levels of Caples Lake  
19 for a period of time, and this is 1965 to 1990, it shows the  
20 different kinds of years that occur within that and there is  
21 a sufficient range of water, there is a sufficient range of  
22 available storage within the lakes, to allow an operational  
23 model to work with proper consultantship. There is no reason  
24 why we can't use the April 1 snow water content as updated by

1 May 2 as necessary, and predictive runoff model to develop a  
2 good operational model, and I have thought through that, but  
3 don't have time right now to talk about it. The two minutes  
4 is up.

5 MR. STUBCHAER: Would you put your, I guess, first or  
6 second exhibit up there again, please, where you filled the  
7 minimum pool?

8 A Correct.

9 MR. STUBCHAER: Would that be at a given time within  
10 the year, or the minimum at any point in time?

11 A The minimum would be the minimum through the year.  
12 It would be the ultimate minimum pool below which the lake  
13 should not be drawn. Of course, it may drop below which it  
14 should not be drawn deliberately to ensure that it refills  
15 the following year.

16 But then when you come to April 1 and you know what  
17 the snow water content level would be, you could draw it  
18 lower.

19 MR. STUBCHAER: Okay, thank you.

20 MR. VOLKER: Mr. Stubchaer, that concludes our  
21 expert panel's testimony. I would like to offer into  
22 evidence the testimony and exhibits of both the lay and  
23 expert panels.

24 MR. STUBCHAER: I think we'll rule on this following

1 cross-examination.

2 MR. VOLKER: Thank you.

3 MR. STUBCHAER: Mr. Somach, do you wish to cross-  
4 examine?

5 MR. SOMACH: Yes.

6 **CROSS-EXAMINATION**

7 BY MR. SOMACH:

8 Q Mr. Skinner, it is my understanding of your testimony  
9 that you believe that the El Dorado project will adversely  
10 affect plant species because of growth-inducing impacts  
11 associated with water; is that correct?

12 MR. SKINNER: A Depending on whether or not a system  
13 of open space preserves incorporating the gabbro soils are  
14 put into place or not, yes, that is correct. With a system  
15 of preserves, which are currently not in place, I think that  
16 the plants would persist quite fine. Without those  
17 preserves, I think they are in jeopardy.

18 Q But the focus of your concern is growth-inducing  
19 impact as opposed to actual diversion of water?

20 A Absolutely.

21 Q Mr. Clark, the same question to you.

22 MR. CLARK: A Yes.

23 Q That is your concern; is that right?

24 A That's my concern.

1           MR. SKINNER:   A   I do have concerns with the actual  
2 route of any water conveyance systems.

3 Q           And you believe that prior to the time that those  
4 conveyance systems are built that there ought to be a site-  
5 specific environmental review of that question; is that  
6 correct?

7 A           Yes, that's correct.

8 Q           The same thing, Mr. Clark?

9           MR. CLARK:   A   It is my understanding through reading  
10 of the Draft EIR prepared by El Dorado, it says that they  
11 will be specific, so that will be addressed under CEQA.

12 Q           And you agree with that; don't you?

13 A           I think that is appropriate, for specific impacts.

14 Q           One final question, Mr. Clark.   You indicated -- if  
15 you would take a look at page 3 of your testimony --

16           MR. VOLKER:   Just a minute so that we can deal better  
17 with the fact we only have two microphones for three people,  
18 Dr. Curry, could you move down to the middle of the table?

19           MR. SOMACH:   I just wanted to clarify a statement,  
20 Dr. Curry, that you made about what Mr. White had indicated  
21 in terms of plant species.   Isn't it true that the biological  
22 opinion for the Central Valley Project interim contract  
23 renewal concluded that none of the species he's identified  
24 were determined to be critical or would lead to extinction in

1 the three-five year period dealt with in the interim contract  
2 renewal process.

3 MR. CLARK: A No, that is not true. Under specific  
4 questioning by myself as an interested panelist and pursuant  
5 to the process, Mr. White distinctly stated that the El  
6 Dorado rare plants did meet the definition of critical needs  
7 as defined in that process.

8 Q And how did he propose to deal with that issue, then,  
9 because a biological opinion was issued and the contracts  
10 were executed; were they not?

11 A Yes, they were and he did not propose to deal with it  
12 in this forum. And my understanding of that is a complete  
13 non-understanding and I cannot answer for Mr. White in that  
14 regard.

15 Q And what additional confirmation did you have for  
16 what is reported factually on page 3 through the beginning of  
17 page 4 in which you indicate, I concur in this assessment.  
18 Is there anything beyond your mere reporting of those events  
19 that you have to base that statement on?

20 A I do not have written documentation of that. There  
21 were a number of people present at the hearing who  
22 participated in the project who can testify that was indeed  
23 the case.

24 Q Do you have a list of the people who participated in

1 the final summary process?

2 A Yes.

3 Q Mr. Curry, how much of the hydrology modeling that  
4 you did was done before, and when did you create the model?

5 MR. CURRY: A I created the model in 1994, really in  
6 1994.

7 Q Take a look at page 3 of your written testimony.

8 A I have it before me.

9 Q Okay, paragraph 2. First of all, let me ask you, you  
10 were at the prior hearings; were you not?

11 A I was.

12 Q Did you hear the Bureau of Reclamation testify at  
13 that time?

14 A I do not remember hearing the Bureau's testimony at  
15 that time. I wasn't present all day.

16 Q I notice at the end of paragraph 2, you say, I do not  
17 believe such entitlement has been obtained and it seems  
18 foolhardy to base a decision upon the present project on such  
19 a politically tenuous possibility.

20 And as I understand what you are talking about in  
21 terms of a politically tenuous possibility, that is some  
22 contractual arrangement with the Bureau of Reclamation with  
23 respect to the utilization of Folsom; is that correct?

24 A That's correct.

25 Q But you are not aware of any testimony by the Bureau

1 of Reclamation on this point?

2 A I am not aware of any testimony. I did just today,  
3 just a matter of hours ago, have an opportunity to read the  
4 contracts on Folsom between El Dorado and the Bureau.

5 Q How is that relevant in your mind to whether or not  
6 the Bureau of Reclamation would or would not issue a separate  
7 contract with respect to the taking of water from Folsom  
8 Reservoir?

9 MR. VOLKER: Excuse me, I would like to interpose an  
10 objection. I believe the witness' testimony as set forth in  
11 paragraph 2, page 3, stands for a different proposition. I  
12 don't believe the questions have properly characterized that  
13 testimony.

14 MR. STUBCHAER: To the extent he is able to answer  
15 the question, I will permit the answer.

16 A My understanding is not perfect. I did not find in  
17 the documents that were presented in this particular case, in  
18 the environmental impact assessment documents, I did not find  
19 a discussion of the Folsom contracts, so I could not  
20 understand fully what was involved here. It was my  
21 understanding that those Folsom contracts had in the past not  
22 always been able to be honored to the magnitude of 4,000  
23 acre-feet or whatever, that you would have expected to  
24 receive from them, that there was a year, 1992, I believe,

1 when that contract was shortened and it was further my  
2 understanding that the Bureau contracts are subject to all  
3 Federal and State laws that control releases of water for  
4 other competing uses, and that you stood in line with each of  
5 those.

6 Q Mr. Curry, you are testifying as an expert; is that  
7 correct?

8 A Correct.

9 Q Okay. Upon what basis is the expert testimony that  
10 you presented in paragraph 2 based upon at the time it was  
11 written?

12 A At the time it was written I have a note in the  
13 margin of my copy which says page ES-2, so I presume that's a  
14 supplemental impact statement. Page 2 was what I was  
15 responding to in that particular case.

16 Q But in terms of rendering the expert opinion, upon  
17 what did you rely?

18 A I relied upon my understanding, my past dealings, my  
19 professional judgment of the requirements for storage of  
20 water in a Federal project that is paid for with Federal  
21 funds.

22 Q But until lunchtime today, you never looked at the  
23 actual contract involved?

24 A I had not ever seen the actual contract involved,

1 right.

2 Q Paragraph 3 of your testimony.

3 A Well, that's based on tables 7-x, etc., in appendix F  
4 and on page 25 following appendix F, and on page 12 of the  
5 Supplemental Draft, and it is based upon my understanding of  
6 the rights -- I did read and I had read at the time I did  
7 this, the 1919 agreement, so I was basing it upon what it  
8 said in that 1919 agreement.

9 Q Are you a lawyer, Mr. Curry?

10 A I am not a lawyer. I am a Water Resource Specialist,  
11 sir, and there's so much law involved in water resources that  
12 I cannot but help have to get into law. I do actually teach  
13 a section on water law.

14 Q Is it your legal opinion, then, that paragraph 11,  
15 and in fact, the 1919 contract, is anything more than a  
16 bilateral agreement between two parties?

17 A I cannot render an opinion on that, as you well know,  
18 sir. I am not an attorney.

19 Q Is it your legal opinion that the 1919 agreement is a  
20 grant of water rights from one party to another?

21 A I don't know the answer to that.

22 Q In paragraph 4, Mr. Curry, you talk about the use of  
23 Sly Park Reservoir for storage above Folsom Reservoir and how  
24 it might be desirable for the El Dorado project. Are you

1 aware of any testimony that's been provided by El Dorado in  
2 which it indicated that it intended to operate in this  
3 manner?

4 MR. VOLKER: Excuse me, I don't know what you mean by  
5 "operated in this manner".

6 MR. SOMACH: In the manner described in paragraph 4.

7 MR. VOLKER: Q Dr. Curry, answer only if you  
8 understand what the question asks.

9 A I'm trying to find out what I said about operation of  
10 Sly Park. Paragraph 4 tries to update what I said in my 1993  
11 testimony which extensively dealt with the issue of excess  
12 storage capacity in Sly Park Reservoir, and I was informed  
13 that there may have been subsequent changes in that  
14 operational issue. Questions today have attempted to get at  
15 that.

16 Q So paragraph 4 is a recitation of the 1993 testimony  
17 which does not reflect any modifications that would have been  
18 made in the project between 1993 and the time of the filing  
19 of the supplemental application; is that correct?

20 MR. VOLKER: Excuse me, the paragraph stands for what  
21 it stands for. Asking the witness to characterize this  
22 statement is irrelevant and not an issue in this case.

23 MR. SOMACH: I move to strike paragraph 4 as merely  
24 being a reiteration of testimony that was given in 1993 and

1 not being reflective of the actual project that is before the  
2 Board now. I am only going through the testimony they have  
3 presented. That is all I am doing.

4 MR. STUBCHAER: It seems to me, Mr. Volker, you can't  
5 have it both ways. It is one way or the other. Mr. Taylor,  
6 do you have a comment on this?

7 MR. TAYLOR: I would agree with you.

8 MR. VOLKER: I take exception. The paragraph speaks  
9 for itself. It refers to changed conditions in the new  
10 supplement referring to the supplement to the EIR, and  
11 evaluates those conditions and comes to conclusions which  
12 differ from those presented in the 1993 testimony.

13 Mr. Somach's extreme effort to mischaracterize this  
14 paragraph, notwithstanding, it is perfectly appropriate for  
15 Dr. Curry to make reference to his previous testimony to show  
16 in what respects it remains valid today and what respects he  
17 has adjusted it. He has done both. He adjusted it and he  
18 has stated that in some respects it remains the same.

19 MR. STUBCHAER: I don't see why he can't answer the  
20 question. You object to the question and then Mr. Somach  
21 moved to strike, so either he is going to answer the  
22 question, or we will strike the paragraph.

23 MR. VOLKER: I object to the question because it  
24 misstated the paragraph. I don't object to having the

1 witness describe or summarize the paragraph. I do object to  
2 Mr. Somach's repeated efforts to put words in the mouth of  
3 the witness.

4 MR. STUBCHAER: Well, it seems to me that is what  
5 lawyers do.

6 MR. VOLKER: I am sorry we have that reputation.

7 MR. SOMACH: I think what lawyers do is attempt to  
8 seek the truth or the bottom line in what is in this  
9 testimony. That's all.

10 MR. STUBCHAER: Would you ask your question again  
11 pertaining to paragraph number 4.

12 MR. SOMACH: Mr. Curry, will you characterize your  
13 paragraph number 4, please.

14 A Paragraph number --

15 MR. VOLKER: That is a meaningless question. The  
16 paragraph stands for itself.

17 MR. STUBCHAER: All right. Would you rephrase it so  
18 that it isn't putting words in his mouth, Mr. Somach, perhaps  
19 by asking if there's any difference between his 1993  
20 testimony and what he is stating here.

21 MR. SOMACH: Q That is fine. What is the difference  
22 between your 1993 testimony and this testimony on the  
23 question of the utilization of Sly Park?

24 A In my 1993 testimony, I looked purely at the excess

1 reservoir capacity that was available over the standard  
2 filling of the reservoir in the springtime.

3           This time I accommodated some unknown increase in  
4 minimum pool values, that is, it was allowed we could draw  
5 the reservoir lower and, therefore, have more capacity to  
6 fill the reservoir. This time I also considered the newly  
7 imposed subsequent to the 1993 testimony, Bay-Delta releases  
8 and water quality standards that have changed the  
9 requirements upon the Bureau of Reclamation's facility.

10 Q           Now, if you recall, the very first question I asked  
11 you about this paragraph, it was, are you aware of any  
12 testimony on the part of El Dorado that they intended to  
13 utilize Sly Park in the manner that you have described?

14           MR. VOLKER: Are you referring to the testimony in  
15 1993 in this proceeding?

16           MR. SOMACH: The testimony of these hearings on these  
17 applications.

18           MR. VOLKER: Testimony only by El Dorado witnesses?

19           MR. SOMACH: That is the question I asked.

20           MR. VOLKER: All right.

21           MR. STUBCHAER: Can you answer that, Dr. Curry?

22 A           I heard testimony on table 7.5 and others that  
23 purported to draw water from and rely upon a certain volume  
24 of water from Sly Park Reservoir.

1           MR. SOMACH:   Q   Over and above -- the question I'm  
2 asking is, is that water that you heard testified to over and  
3 above the normal utilization of Sly Park for meeting El  
4 Dorado needs, or are you talking about some reoperatioan in  
5 the context of the 17,000 acre-feet that are the subject of  
6 these hearings?

7           MR. VOLKER:   Doctor, you understand the question?

8 A           I believe I understand the question.  I believe I am  
9 not talking about reoperation.  I did not give testimony  
10 directed toward reoperation of Sly Park Reservoir.  I believe  
11 there were questions, specific questions, directed toward  
12 that and I did not hear answers.  I heard objections from you  
13 every time such a question was asked, and therefore I have to  
14 say I did not hear the testimony because you blocked it.

15 Q           With respect to paragraph 4, are you suggesting any  
16 reoperation of Sly Park as part of that testimony?

17 A           As far as my testimony?

18 Q           Yes.

19 A           All I did in paragraph 4 is try to include a larger  
20 envelope, a greater capacity of water to supply your clients'  
21 project from Sly Park, in comparison to my earlier testimony.

22 Q           And how do you do that?

23 A           By changing the minimum pool volume.

24 Q           Does that change the operation of Sly Park?

1 A           It should certainly change the operation of Sly Park  
2 because you can draw it down lower in the winter, you can  
3 fill it up more when you have runoff.

4 Q           I am just trying to confirm that what you are talking  
5 about in paragraph 4 in part is a modified operation of Sly  
6 Park; is that correct?

7 A           Correct.    I have learned of such an operational  
8 change from the popular press and that's the only place I had  
9 been able to glean such an operation of the model.

10 Q          Paragraph 5 -- do you have any specific expertise in  
11 the area of political science?

12 A          I do not.

13 Q          That paragraph, however, as I understand it, purports  
14 to speculate with respect to what the general voting public  
15 might do under certain circumstances; is that correct?

16 A          I do not have any expertise in political science.  I  
17 do have expertise in water resource policies.  That is my  
18 area of expertise.

19            To the extent that water resource policy in  
20 California is very political, I do understand the politics of  
21 water resource allocation and this deals directly with that  
22 issue.  I am not a political scientist, I am a water resource  
23 specialist.

24            MR. SOMACH:  I move to strike paragraph 5 in its

1 entirety.

2 MR. TAYLOR: Your grounds?

3 MR. SOMACH: As being outside the expertise of this  
4 witness. I mean, I have no objection to any of this coming  
5 in as a policy statement, but when it comes in under the  
6 guise of expert testimony, it is objectionable.

7 MR. TAYLOR: Mr. Volker.

8 MR. VOLKER: Thank you, Mr. Taylor. Dr. Curry has  
9 explained that he teaches water resource management and that  
10 he is a water resource specialist, and that there is  
11 intersection between political science and water resource  
12 management. This paragraph explicates Dr. Curry's evaluation  
13 of the appropriateness of assuming that additional water will  
14 be made available in future years in response to ever  
15 expanding demands made on this hydrologic system. In his  
16 analysis, he has explained he not only looks to the natural  
17 components of the hydrologic system, but also the feasibility  
18 of the human response or the engineering response, the other  
19 half of the equation delivers water through the needs that  
20 have been articulated. I think the paragraph is clearly  
21 within his area of expertise and essential to gain an  
22 understanding of his analysis.

23 MR. STUBCHAER: I believe that the area covered in  
24 Section 5 is not very precise and really not predictable. We

1 will permit the testimony in, but we will consider the  
2 qualifications of the witness when we give weight to his  
3 testimony.

4 MR. SOMACH: Q Paragraph 6, Mr. Curry. Is it your  
5 opinion that reliance upon the 17,000 acre-feet, which are  
6 the subject of this hearing, in combination with the other  
7 water rights that are articulated in Exhibit 78-A and B,  
8 which are the two charts that were separate exhibits, will  
9 not meet the demands through 2013 of El Dorado Irrigation  
10 District?

11 A I'm not sure. I don't have my tables put together by  
12 exhibit number, so I will have to ask you what 78-A and B  
13 were. Is that in the environmental document?

14 Q It is Exhibit 78, which was Mr. Hannaford's document  
15 and those were two charts which sought to explain the  
16 supply/demand understanding. Those were charts 7.5 and 7.6.

17 A Okay, thank you.

18 Q And maybe just to make sure that I have not -- your  
19 testimony is that the supply/demand conclusions in those  
20 charts are inaccurate?

21 A I have done no analysis of the demands at all. That  
22 is outside my area of expertise. I am looking at the supply  
23 issues here. I am looking at supply. I accept your demand  
24 numbers or the demand numbers put forth and try to see

1 whether I can find the supply to meet that demand.

2           It is my testimony that the amount of water may be  
3 there, but that to utilize it will require an operational  
4 utilization of the lake storage in a fashion that differs in  
5 frequency, duration, and magnitude from that of PG&E's  
6 operational parameters from 1935 to 1992.

7 Q           The model output that you have provided, then, seeks  
8 to reoperate the PG&E system in order to meet that demand?

9 A           No, sir. It only looks at your supply requirements,  
10 the places that you propose to get that supply from, and  
11 operate that in a fashion that allows me to look at how much  
12 water is going to come from instream sources, how much water  
13 is going to come from storage, to see where that water would  
14 come from.

15           And it is upon that basis that I find a shortfall, a  
16 projected shortfall.

17 Q           In your testimony, Mr. Curry, you speak in terms of  
18 meeting 2020 needs; is that correct?

19 A           I did use in paragraph 10 the 2020 demand figures  
20 which I must have gotten from something that listed them.  
21 Did I make a mistake? Was it supposed to be 2017?

22 Q           Would any of your conclusions change if the demand  
23 level that was looked at was 2013?

24 A           Not in that paragraph.

1 Q How about your conclusions generally with respect to  
2 supply being sufficient to meet demands. If you were taking  
3 a look at the 17,000 acre-feet annually in combination with  
4 the other sources of water that was dealt with in Exhibit 78,  
5 and using a demand figure associated with 2013 as opposed to  
6 2020, would that change any of your conclusions?

7 A No, sir. In fact, I use the numbers in those tables,  
8 7. --

9 MR. STUBCHAER: Mr. Somach, 20 minutes have expired.  
10 How much additional time do you need?

11 MR. SOMACH: I'm not sure I need any. Let me just  
12 consult with the rest of my notes here. I have no further  
13 questions.

14 MR. STUBCHAER: All right. Who else wishes to cross-  
15 examine this panel? All right, we will take a 12-minute  
16 break now and resume the cross-examination after the break.

17 (Recess.)

18 MR. STUBCHAER: Okay, we will reconvene the hearing.  
19 I would like to ask those persons who intend to cross-  
20 examination this panel to please stand and I will ask some  
21 questions. How much time, Mr. Moss, do you think you will  
22 need?

23 MR. MOSS: Five minutes

24 MR. STUBCHAER: Mr. Infusino?

1 MR. INFUSINO: At most 15 minutes.

2 MR. STUBCHAER: Mr. Gallery.

3 MR. GALLERY: Two minutes.

4 MR. STUBCHAER: We're trying to get Amador and  
5 Kirkwood's witnesses on today because of conflicts tomorrow.  
6 Mr. Canaday, how much time do you need?

7 MR. CANADAY: I don't think it's going to be very  
8 long. We haven't heard from the Department of Fish and Game.  
9 I do think they want to cross-examine.

10 MR. STUBCHAER: All right. We will proceed with the  
11 cross-examination.

12 MR. SOMACH: Mr. Stubchaer, do you have an indication  
13 of how late we are going to go this evening?

14 MR. STUBCHAER: I don't want to go past 5:00,  
15 actually, but if it is necessary to accommodate some  
16 witnesses, and we are close, we might go later.

17 MR. SOMACH: I have to teach this evening, and I need  
18 to know whether or not --

19 MR. STUBCHAER: Where?

20 MR. SOMACH: At McGeorge.

21 MR. STUBCHAER: Which is here.

22 MR. SOMACH: I know, but I have to get there and if  
23 we're going to go beyond 5:30, I would like to know so I can  
24 make some --

1 MR. STUBCHAER: We will plan on not going past 5:30.

2 MR. SOMACH: Thank you.

3 MR. LEHR: Mr. Stubchaer, I understand Fish and  
4 Game's position was held open. The Department will not  
5 cross-examine.

6 MR. STUBCHAER: Thank you very much for that  
7 information. Mr. Gallery.

8 **CROSS-EXAMINATION**

9 BY MR. GALLERY:

10 Q Just a couple of questions of Dr. Curry with respect  
11 to page 6 of your testimony where you referred to some  
12 exhibits, RC 30 and 31 which you projected on the screen  
13 showing how Caples Lake might be operated to have higher  
14 levels through the year to provide a better recreational use  
15 of the lake.

16 At the time you prepared those illustrations, were  
17 you also preparing something having to do with Silver Lake as  
18 a companion to that?

19 MR. CURRY: A Not as a precise companion analysis to  
20 that because we weren't worrying about operation of that as  
21 part of a settlement.

22 Q I see, and you weren't suggesting in that  
23 illustration that the water that might be kept in Caples Lake  
24 would be taken out of Silver Lake; were you?

1 A No, as a matter of fact, our analysis shows that the  
2 firm yield of Silver Lake should be slightly less than what  
3 it is, so that indeed you have less water from each of the  
4 lakes.

5 Q In any event, your graphic representation wasn't  
6 meant to suggest that Silver Lake would pay the price for any  
7 of that?

8 A No, none of the Sierra Lakes would.

9 MR. GALLERY: Thank you.

10 MR. STUBCHAER: Thank you. Mr. Moss.

11 **CROSS-EXAMINATION**

12 BY MR. MOSS:

13 Q Dr. Curry, you maintain that in the course of your  
14 teaching or rather expertise that you are familiar with the  
15 Federal Power Act in the licensing of Federally licensed  
16 hydroelectric projects?

17 MR. CURRY: A My area of expertise is in hydrology  
18 and in hydrologic effects of dams, and to that extent, yes, I  
19 know about those portions. I don't know about equal  
20 opportunity in Federal Power Act operations. I know about  
21 water.

22 Q And if I mentioned to you the first Iowa case, would  
23 that ring a bell?

24 A It does not ring a bell.

1 Q Or the Rock Creek case?

2 A Yes, the Rock Creek case is one that my students have  
3 worked.

4 Q Would it be your understanding that the holding in  
5 the Rock Creek case would limit the State's authority to in  
6 fact impose operating conditions on licenses of Federally  
7 licensed hydroelectric projects?

8 A That is my understanding, yes.

9 Q And as far as you know, is Caples Lake within a  
10 Federally licensed hydroelectric project?

11 A I believe it is, yes.

12 Q And that's project 184?

13 A Correct.

14 Q You proposed in essence a reoperation of that  
15 reservoir?

16 A I don't believe I proposed it. I have conducted an  
17 analysis of how that might be done.

18 Q For what purpose?

19 A The purpose of my analysis was to try to determine a  
20 negotiated settlement.

21 Q Between?

22 A I don't remember who all the parties were and I would  
23 have to defer to counsel on that, I'm sorry.

24 Q Well, PG&E is a current licensee of project 184.

1 Have you discussed that with us?

2 A I have repeatedly and at great length attempted to  
3 work with PG&E to collect data and to work with them to  
4 develop my information base. Only recently has PG&E agreed to  
5 cooperate with me, only in the last weeks, over a period of  
6 many, many years.

7 I have talked to the Vice-President Lovell, I have  
8 talked to the full environmental group, I have repeatedly  
9 given talks and made presentations to PG&E. Yes, I have  
10 extensively worked to try to get the cooperation of PG&E.

11 Q But, have you negotiated or put forward this proposal  
12 to us in any way that I could refer to?

13 A To the best of my knowledge, no. PG&E has not been a  
14 party to the negotiated settlements.

15 Q Turning to some of the actual facts here, do you know  
16 what is the present total storage, the potential total  
17 storage in Caples Lake approximately?

18 A Actually, there is a difference of opinion, but the  
19 PG&E rating curve shows it to be 21,000 some-odd acre-feet.

20 Q Okay, and in your proposed minimum pool, what would  
21 that translate into in terms of acre-feet in the reservoir?

22 A I could look that up exactly for you using PG&E's  
23 rating curve data.

24 7944.6 has a storage of about 14,800 acre-feet.

1 Q           So, in essence you are saying that the reservoir  
2 would be committed two-thirds, if you will, to a minimum  
3 pool; is that correct?

4 A           In years when the projected runoff was inadequate to  
5 allow draw down further than that, yes, to ensure that it  
6 refilled.

7 Q           As of what date would that determination be made?

8 A           Well, it would be made April 1 in normal operational  
9 years and May 1 when you had a later snow survey that amended  
10 the April 1st projections.

11 Q          I would like to ask you a little bit about whether  
12 you have analyzed what the impacts of that proposed change  
13 would be on downstream beneficial uses, in particular,  
14 hydroelectric development.

15 A          I have looked at the value of hydropower foregone.

16 Q          And you quantified that?

17 A          I have. I don't remember -- this was an effort that  
18 went nowhere.

19 Q          Would it be unreasonable for me to suggest that if we  
20 implemented your proposal that we would in most years face  
21 much bigger spills of water because basically the dam would  
22 be fully loaded by that April date that you suggest, and any  
23 additional water that melted basically would spill rather  
24 than be stored?

1 A I would accept that statement as a possible scenario,  
2 yes.

3 Q Are you aware of the capacity of the El Dorado canal?

4 A I have done a rather exhaustive study of the capacity  
5 of El Dorado Canal and attempted at great length to get  
6 quantification, verification of my numbers from the U.S.G.S.  
7 who is responsible for the FERC overview. The U. S.  
8 Geological Survey has not a clue, FERC has not a clue, PG&E  
9 was unable to supply me, Mr. Grant was unable to supply me  
10 with the data from your hydrographer.

11 So, I did my own calculations, my own analysis. The  
12 FERC requirements says there has to be a ten-inch safety  
13 margin or freeboard on the top of the ditch, but, of course,  
14 the ditch has so many holes and leaks in it that I'm not sure  
15 what that means. But my estimation is that it will hold  
16 about 165 cfs as its maximum discharge capacity, but that it  
17 would be leaking at very high rates at that level.

18 Q And whether we accept that or somewhat lesser  
19 amounts, if, in fact, your proposed higher minimum pool was  
20 instituted, would there be sufficient capacity in that canal  
21 to move and put to beneficial use any stored water. What I am  
22 saying in essence is would there be basically a problem  
23 because the canal would be filled by basically the diversion  
24 of natural runoff and the movement, if you will, of stored

1 water would be severely limited?

2 A I have not done that analysis.

3 Q And have you looked, for instance, at whether  
4 imposing this higher minimum pool could, under some  
5 scenarios, affect the ability to meet minimum fish-water  
6 releases?

7 A Yes, I have looked at that very carefully and I have  
8 talked with Mr. Lehr and other Fish and Game representatives  
9 to find out what possible changes might occur in the future  
10 so that I can plug any future analyses of changes in fish  
11 flows into my operational understanding.

12 Q I guess my last question is, since it is PG&E's  
13 position that this whole area that we have just been speaking  
14 of is strictly jurisdictional to FERC, are you proposing to  
15 argue or planning to propose this to FERC?

16 A I have discussed with FERC at length a set of changes  
17 that might be put into place to protect values that FERC is  
18 concerned about. The minimum pool was not one of the issues  
19 that I have discussed with FERC.

20 MR. MOSS: Thank you, sir.

21

22 MR. STUBCHAER: Mr. Infusino.

23

**CROSS-EXAMINATION**

24 BY MR. INFUSINO:

1 Q I would like to address my first question to Ms.  
2 Watt. Ms. Watt, in your written testimony on page 2 you state  
3 --

4 MR. SOMACH: Objection.

5 MR. STUBCHAER: The written testimony wasn't  
6 accepted.

7 MR. INFUSINO: Has it been rejected completely? I  
8 thought we were waiting until cross for a motion on that?

9 MR. STUBCHAER: Right.

10 MR. INFUSINO: So, all the written testimony is gone?

11 MR. STUBCHAER: Just hers.

12 MR. INFUSINO: Then, I don't think I have any  
13 questions.

14 MR. STUBCHAER: Okay. Staff?

15 **EXAMINATION**

16 BY MR. LAVENDA:

17 Q Dr. Curry, I believe Mr. Gallery touched on this.  
18 When you did your modeling operations, did you include water  
19 from sources other than Silver and Caples, specifically Aloha  
20 and Echo?

21 MR. CURRY: A Yes, sir, Aloha, Echo and instream  
22 sources.

23 Q But not Silver?

24 A Yes, and Silver.

1 Q           So, in consequence, you looked at project 184 as it  
2 might be operated to supply the water requested by El Dorado  
3 for the project that is the subject of this hearing?

4 A           Correct.

5 Q           In that operation, did you include providing the 1919  
6 contract water as well as the water that is the subject of  
7 this hearing?

8 A           Yes, the 1919 contract water is there. We must meet  
9 that, yes.

10 Q          So, your 7,000 acre-foot withdrawal from Caples Lake  
11 includes water for both the contract water and the water that  
12 is the subject of this hearing?

13 A          Let me back up. The 7,000 acre-foot withdrawal is  
14 not an absolute limit on the amount of water that's available  
15 from the lakes. Some years it will be more, some years it  
16 will be less.

17            The 1919 water, as I understand it, takes the  
18 precedence that the 1919 water takes in the availability of  
19 water. If it is not there, it is not there.

20            So, I don't try to operate the system in such a way  
21 that I always had all of the 1919 water.

22 Q          I'm sorry, you did not always have?

23 A          All of the 1919 water. There are dry years when you  
24 don't have all the 1919 water. I was analyzing an

1 operational model that would try to protect the recreational  
2 values of the lakes and the fish flows and the wildlife flows  
3 and try to accommodate increases in those where they were  
4 deemed prudent by Fish and Game and FERC.

5 Q Do the historical operating levels of PG&E as you  
6 understand them, fall within or below this level that you are  
7 proposing? Did you do any frequency analysis to determine --

8 A Yes.

9 Q Can you answer that?

10 A Yes, it's massive tables but the PG&E operational  
11 history generally takes more water out of the lake than this  
12 optimal operational model would take?

13 Q Out of which lake?

14 A Out of Caples and Silver and Aloha. And not out of  
15 Echo. Echo is the same. Because Aloha drops its water early  
16 in the season and doesn't keep enough water to provide the 2  
17 cfs fish flows, my operational model looked at what if we  
18 kept some water in Aloha so you could maintain the 2 cfs fish  
19 flows as Fish and Game intended, but didn't get. So, that's  
20 the only difference in the operation of Aloha.

21 Q Thank you.

22 Dr. Skinner, you talked about the necessity for large  
23 blocks of habitat to maintain the species long-term.

24 MR. SKINNER: A That's right.

1

2 Q Do you have any idea what large blocks of habitat  
3 means, I mean, how many acres are we talking about?

4 A Well, the gabbro outcrop as a whole is approximately  
5 40,000 acres and the provisional preserve plan that we put  
6 together encompasses a total of 4,000 acres that would be  
7 distributed in five blocks and the largest of those blocks  
8 was something on the order of a couple of thousand acres and  
9 the smallest were about a couple hundred acres.

10 Q And that largest block was probably the southern  
11 block?

12 A No, the largest block was the Salmon Falls block and  
13 the Southern Cameron Park preserve in it was to encompass  
14 something on the order of 600, 700 acres.

15 Q Dr. Clark, did you want to answer?

16 MR. CLARK: A I can clarify that a little bit. As  
17 the original examination of the existing resources indicated,  
18 there was not that amount of land available. The Southern  
19 Preserve, if constituted optimally, would be less than 400  
20 acres.

21 MR. SKINNER: A I wish I could elaborate on the need  
22 for those larger preserves, because I think I was unclear  
23 before. The problem with smaller preserves is they tend to  
24 be surrounded by houses and, therefore, they are difficult to

1 manage because you can't burn areas with high urban  
2 residence. I don't know if I made that clear or not.

3 Q Yes, you did. From the testimony it was indicated  
4 that several of these species have been candidates for  
5 listing by the U. S. Fish and Wildlife Service.

6 A Five of them are now proposed for listing as  
7 endangered species under the Federal Endangered Species Act  
8 and a decision now, notwithstanding any congressional  
9 moratoria, a decision on that should be made within a year  
10 from the time it was proposed.

11 Q To your knowledge, and this is to anyone on the  
12 panel, are any of the 4,000 acres that are identified as  
13 necessary habitat blocks, are they inside or outside the El  
14 Dorado Irrigation District Service area currently?

15 MR. CLARK: A I believe they are all within the El  
16 Dorado Irrigation District service area, but I am not an  
17 expert on the exact boundaries of the service area.  
18 Certainly, the Southern Preserve, which is of great concern,  
19 is.

20 Q You are not aware, currently, of any of these being  
21 outside the El Dorado Irrigation District service area?

22 A I am not aware of that, but I do not know that  
23 precisely.

24 Q These plants that you have identified as potential

1 habitat blocks, are they in public ownership or private lands  
2 or both?

3 A Yes, both. The Northern preserve, the Salmon Falls  
4 preserve, is substantially in private lands and it is hoped  
5 that an agreement to transfer development rights would result  
6 in the landowners setting aside an equally large preserve in  
7 that area. The Central Preserve is centered around Pine  
8 Hill, the geologic type of the area, and it is focused on  
9 some acres, 120, I believe, of combined ownership, public  
10 ownership, and it is hoped that the rest of that preserve  
11 would be established by conservation easements from willing  
12 landowners in the area.

13 The Southern Preserve is a private holding. There are  
14 two satellite preserves that are roughly 200 acres each that  
15 are presently in public holding and are essentially  
16 constituted as preserves already.

17 Q Now, the land that's in public holding, I understand  
18 some of that is Bureau of Land Management land?

19 A That is correct.

20 Q Are any of the lands held by the County or the  
21 Irrigation District?

22 A Not to my knowledge.

23 MR. CANADAY: That's all I have. Thank you.

24 MR. STUBCHAER: Mr. Taylor.

1 MR. TAYLOR: No questions.

2 MR. STUBCHAER: That concludes the cross-examination.  
3 Any redirect?

4 MR. VOLKER: May I take a minute, please?

5 MR. STUBCHAER: All right, Mr. Volker.

6 MR. VOLKER: Thank you, Mr. Stubchaer.

7 MR. STUBCHAER: Do you have redirect?

8 MR. VOLKER: Yes, very brief.

9 **REDIRECT EXAMINATION**

10 BY MR. VOLKER:

11 Q Dr. Curry, in response to a question from staff  
12 engineer, Mr. Lavenda, you made reference to all 1919 water.  
13 By that reference, did you mean to refer to the 15,000 acre-  
14 feet annually that El Dorado asserts it is entitled to under  
15 that 1919 agreement?

16 MR. CURRY: A No. I meant to assert that the 1919  
17 agreement water, which includes, I believe, 5,000 acre-feet  
18 from Silver Lake, I don't remember the exact amount, but it  
19 was my understanding that 1991 agreement water did not  
20 include water from Caples or Aloha.

21 MR. VOLKER: I have nothing further.

22 MR. STUBCHAER: Thank you. Any recross? Staff? I  
23 see no recross. Do we have exhibits?

24 MR. VOLKER: Yes.

1 MR. CANADAY: Mr. Stubchaer, I have one question.

2 MR. STUBCHAER: I didn't hear you.

3 MR. VOLKER: I would move into evidence --

4 MR. STUBCHAER: Just a minute, Mr. Canaday has a  
5 question on recross. It will only be with Dr. Curry.

6 MR. CANADAY: On just Dr. Curry?

7 MR. STUBCHAER: Yes, no one else testified on  
8 redirect.

9 Okay, go ahead, Mr. Volker.

10 MR. VOLKER: Thank you. I would like to move into  
11 evidence the testimony and associated exhibits of each of the  
12 members of the lay panel and of the expert panel.

13 MR. LAVENDA: Are you going to identify these?

14 MR. VOLKER: I would like to make reference to our  
15 exhibit identification index. The first of these would be the  
16 testimony of Kirby Robinson. Mr. Robinson testified on  
17 October 25.

18 Next would be the testimony of Dan Dawson who  
19 testified on October 25.

20 The next is testimony of Mark Skinner who testified  
21 today, and then the two exhibits, 1 and 2 to Dr. Skinner's  
22 testimony which comprise his cv and the proposed Federal  
23 listing rule dated April 20, 1994.

24 The next would be the testimony of Dr. Clark. Dr.

1 Clark testified today and his cv, which is GC-1.

2           And the testimony of Mr. Norbert Rupp. Mr. Rupp  
3 testified on October 25, and there were attached to his  
4 testimony 12 exhibits.

5           Next would be the testimony of Mr. Bradley Pearson  
6 who testified on October 25 and three exhibits, BP-1, BP-2,  
7 and BP-3. I would like to respond to an observation made by  
8 counsel for Westlands with respect to the photograph that Mr.  
9 Pearson took two days before this hearing. We will not be  
10 introducing that into evidence. That was purely for  
11 illustrative purposes. Mr. Pearson explained orally the  
12 impacts of low lake levels on recreational uses of the lake  
13 and merely brought the photographs to further enlighten this  
14 Board, but obviously it was not marked and distributed on  
15 October 2, as the Board has required.

16           The next would be the testimony of John Plasse. Mr.  
17 Plasse testified today.

18           And the testimony of Steven Bevitt (phonetic). Mr.  
19 Bevitt testified on October 25.

20           And the testimony of John Brissenten (phonetic). Mr.  
21 Brissenten testified on October 25.

22           And the testimony of James Crenshaw. Mr. Crenshaw  
23 testified today.

24           And the testimony of Mr. Bart Bird. Mr. Bird

1 testified on October 25.

2           And the testimony of Leonard Turnbaugh. Mr.  
3 Turnbaugh testified on October 25.

4           The next in order is testimony of Carol Watt. For  
5 the purpose of maintaining a consistent record, I would again  
6 at the close of direct, cross and redirect, move Ms. Watt's  
7 testimony and associated exhibits into evidence.

8           The next would be testimony of Tim Pemberton. Mr.  
9 Pemberton testified on October 25.

10           And then finally, the testimony of Dr. Curry, who  
11 testified today and the associated exhibits which are RC 28  
12 through RC 44.

13           I may have missed some. With respect to the exhibits  
14 to Mr. Pearson's testimony, I believe the photograph he took  
15 two days before the hearing would have been BP-5, or rather  
16 BP-6, if his testimony is marked BP-5, and his four  
17 photographs are all marked BP-1 through 4, so again, it is  
18 merely the photograph that was taken October 23 which we do  
19 not move into evidence.

20           MR. STUBCHAER: All right. Mr. Taylor, do you have  
21 any comments on Ms. Watt's testimony?

22           MR. TAYLOR: Yes, I don't believe that Ms. Watt's  
23 testimony should be accepted into evidence. It appears there  
24 is a basis for moving with the exception of the photograph of

1 Mr. Pearson, the late photograph -- there appears to be a  
2 basis  
3 for moving the other exhibits into evidence. I assume we  
4 should now ask if any of the parties have objections.

5 MR. STUBCHAER: Any objections to receiving these  
6 exhibits into evidence with the exception Mr. Taylor noted?

7 MR. SOMACH: Subject to the objections I made during  
8 the cross-examination and during the direct testimony of Mr.  
9 Skinner, Mr. Clark, and Mr. Crenshaw and Mr. Curry, El Dorado  
10 has no further objections, with the understanding that the  
11 Watt testimony will be excluded.

12 MR. STUBCHAER: Your objections are on the record.  
13 Anyone else wishing to object? Hearing none, the exhibits  
14 will be accepted as noted with the exception of Ms. Watt's  
15 testimony.

16 MR. VOLKER: Thank you, Mr. Stubchaer.

17 MR. STUBCHAER: Now, with regard to the remainder of  
18 the day, we would like to get to the Forest Service, Amador  
19 County and one lay witness of Kirkwood who has traveled quite  
20 some distance and I'm going to reverse the order just a  
21 little bit here and take Amador County next.

22 MR. GIPSMAN: Mr. Stubchaer, after consulting with  
23 Mr. Taylor, I sent my witness home.

24 MR. STUBCHAER: Oh, you did?



1 Q And is that Amador Exhibit Number 1?

2 A Yes.

3 MR. GALLERY: Mr. Stubchaer, I think we should  
4 probably number our exhibits Amador Exhibit 95-1, and we  
5 would do that with each of our exhibits.

6 MR. STUBCHAER: I will defer to staff.

7 MR. LAVENDA: Yes.

8 MR. GALLERY: Q The next witness we would have would  
9 be Mr. Chuck Lowery, a former employee of the Forest Service  
10 in the Amador District.

11 Mr. Lowery, have you prepared testimony to be  
12 presented today?

13 MR. LOWERY: A Yes.

14 Q Is that Amador Exhibit Number 95-2?

15 A Yes.

16 MR. GALLERY: Mr. Stubchaer, we also have a work  
17 history of Mr. Lowery. I am not sure everybody got copies of  
18 that. We filed it with our Notice of Intent to Appear, and  
19 it wasn't clear that it went out with our exhibits. It is  
20 entitled Education and Work Experience of Chuck Lowery.  
21 Anybody that doesn't have that?

22 MR. STUBCHAER: Did you all hear the question?

23 MR. GALLERY: Q Mr. Lowery, is this a true  
24 description of your educational background and your work

1 history with the Forest Service?

2 A Yes, it is.

3 MR. GALLERY: We would like to have that marked  
4 Amador Exhibit 95-2, Mr. Chairman.

5 Q And our last witness is Stephanie Moreno and, Ms.  
6 Moreno, you have prepared testimony to be presented today on  
7 behalf of Amador?

8 MS. MORENO: A Yes.

9 Q And has that been marked Amador Exhibit Number 95-3?

10 A Yes.

11 MR. GALLERY: Then I guess I would like to start with  
12 Mr. Schuler.

13 Mr. Schuler, could you just briefly summarize your  
14 testimony?

15 MR. SCHULER: A Yes. May I read just a few excerpts  
16 out of the testimony? It would take no more than four  
17 minutes.

18 MR. STUBCHAER: Yes.

19 A Amador has been concerned that El Dorado Irrigation  
20 District would release water from Silver Lake earlier than  
21 PG&E would have done for its own power production, and there  
22 was no agreement between EID and PG&E to the contrary or  
23 which spelled out their future relationship or understanding  
24 regarding timing or EID's use of the releases. Amador County

1 believes that EID's proposed acquisition of PG&E's FERC  
2 project 184 would have a major impact on their recreational  
3 use and enjoyment of Silver Lake and the economy of the  
4 County unless the State Water Resources Control Board imposes  
5 proper restrictions in any permit issued to El Dorado to  
6 protect against improper draw down of Silver Lake.

7           If the State Water Resources Control Board were ever  
8 to issue a permit to El Dorado Irrigation District to  
9 appropriate water in Silver Lake for consumptive uses, it  
10 would be imperative that the Board impose suitable conditions  
11 to require that EID not release water from the lake during  
12 the summer recreational season other than existing fish  
13 releases which is the practice PG&E has followed  
14 historically.

15           It would seem to impose no burden on EID's project  
16 inasmuch as EID's proposed points of withdrawal now would be  
17 only at Folsom Lake.

18           In that case, they would not have to an exact match  
19 in time between the time of releases from Silver Lake and the  
20 time of EID's proposed withdrawals from Folsom Reservoir.

21           On February 4, 1993, Amador County filed Application  
22 30218 with the State Board to appropriate by storage for  
23 recreation, swimming, boating, fishing, water skiing, wind  
24 surfing, hiking, picnicking, scenic vistas, etc., fisheries,

1 wildlife and fire protection.

2           The County has also filed a simultaneous companion  
3 petition with the State Board for a partial assignment to it  
4 of State Application 5645 to appropriate the same quantity of  
5 water at Silver Lake for the same purposes.

6           I personally prepared these filings. PG&E also  
7 operates Silver Lake and other reservoirs for their utility  
8 as recreational lakes.

9           Amador further understands that under the current  
10 FERC license for project 184, PG&E is required to maintain  
11 Silver Lake water surface as high as possible during the  
12 summer months for recreational purposes, subject to the  
13 seepage from the reservoirs and required fish releases.

14           Amador recognizes that the permit would be  
15 subordinate to PG&E's water rights for the generation of  
16 power, but those releases have not been made historically  
17 from Silver Lake until after Labor Day.

18           The purpose of Amador's filings is to be certain that  
19 there are no withdrawals from the lake for other uses during  
20 that period.

21           Amador's filings to appropriate the water in Silver  
22 Lake for recreational uses is in accordance with the  
23 California Water Plan which emphasizes the value of  
24 recreational resources at the upper watershed lakes, such as

1 Silver Lake, and which recommends protection and development  
2 of the water for recreational resources to the highest  
3 practicable degree.

4           The granting of any right or permit to El Dorado to  
5 take any water to the detriment of this recreational  
6 environment would also deprive Amador of the water needed for  
7 development because the recreational use of the lake is  
8 essential to the economy and development of Amador.

9           That concludes my testimony.

10           MR. GALLERY: Thank you, Mr. Schuler.

11           Next we will call on Mr. Lowery to summarize his  
12 testimony.

13 Q           Mr. Lowery, perhaps first you could tell us about  
14 your background involvement with the Amador Ranger District  
15 in the El Dorado National Forest.

16           MR. LOWERY: A Certainly.

17           My name is Chuck Lowery. Prior to retiring from the  
18 U. S. Forest Service on December 26, 1992, I served as the  
19 District Resource Officer in the Amador Ranger District of El  
20 Dorado National Forest for 15 years, from 1977 to 1992.

21           Out of the 15 years, from 1985 to 1987, I was on a  
22 special assignment to the Forest Supervisor's Office in  
23 Placerville where I served as Team Leader for the Forest Team  
24 preparing the Highway 88 Future Recreation Use Determination

1 Study in which current and potential recreational uses in the  
2 Highway 88 corridor were analyzed.

3           Earlier, in 1960 and 1961, I had participated with  
4 PG&E recreation planners in planning for the development of  
5 the FERC 184 exhibits for the Highway 88 portion of the El  
6 Dorado project. Planning and managing for recreational use  
7 on national forest land and Silver Lake were key job  
8 components in these positions and activities.

9 Q           Mr. Lowery, the Highway 88 portion includes Silver  
10 Lake and also Caples Lake?

11 A           Correct.

12 Q           All right. Then, with that background, would you  
13 summarize your testimony regarding recreational use at Silver  
14 Lake?

15 A           Yes. Silver Lake is, and has been since the early  
16 1900s, a popular recreational attraction on Highway 88. With  
17 its diverse mix of resorts, Boy Scout and municipal camps,  
18 summer homes, family camp grounds and trailer camps, it is  
19 the leading summer recreation site on Highway 88 with an  
20 overnight bed capacity of more than 2500 persons at one time.  
21 The basin is heavily used during the summer season,  
22 especially during August and early September when overnight  
23 accommodations are often at capacity.

24           Increasingly, as numbers of retirees grow and year-

1 round school schedules favor non-traditional vacation  
2 scheduling, heavier use at Silver Lake has extended through  
3 September and into the October fall color season.

4           Recreational development and use at Silver Lake,  
5 however, hinge now and have hinged on the fact that the water  
6 level at the lake has been held as full as possible during  
7 the summer recreation use season by PG&E.

8           For this to change, the recreational attractiveness  
9 of Silver Lake would be dramatically reduced. Maintenance of  
10 an adequately high level for recreational purposes is  
11 threatened because of EID's evident desire to maintain  
12 maximum operational flexibility and uncertainty about  
13 willingness to commit under the existing FERC 184 license  
14 language to holding up the lake level during the recreation  
15 season.

16           Currently, draw down prior to Labor Day is limited to  
17 natural leakage and modest fish releases which, for the most  
18 part, enhance the recreational attractiveness of the lake  
19 because narrow, high water beach is expanded to a more usable  
20 width. Large releases, though, whether for power or  
21 consumptive uses during the recreation season would have a  
22 decidedly adverse effect because the south end of the lake  
23 becomes a large mud flat, unusable for fishing, swimming, or  
24 boating.

1           At the north end, boat docks would be left high and  
2 dry and the beaches would widen from their sandy upper  
3 portions to a considerably less recreational appealing mix of  
4 muddy and firm exposed lake bottom.

5           While the cost of operating and maintaining the hydro  
6 facility through which the lake level is maintained are  
7 borne through the owner, the water itself, which the owner  
8 harnesses for its use, flows largely off national forest land  
9 in the Silver Lake watershed and is a public resource with  
10 diverse public values including recreational, fish and  
11 wildlife.

12           As a resident of Amador County, a devoted user with  
13 my family of the national forest land along Highway 88,  
14 including Silver Lake, and a resident of California with an  
15 undivided ownership interest in the public water the lake  
16 holds, I feel entitled to urge the Board to approve Amador  
17 County's Water Rights application for 8,740 acre-feet for  
18 recreational fish and wildlife purposes to ensure adequate  
19 protection of water levels during the summer recreation  
20 season.

21           Based on my personal and work experience at Silver  
22 lake and along Highway 88, I can assert this would clearly be  
23 in the public interest. But in addition, the hydro or  
24 consumptive use applicant should be required as a condition

1 of approval of its application to guarantee maintenance of  
2 satisfactory lake levels through the firm documented  
3 scheduling of its releases from Silver Lake from the waning  
4 of the recreation season after September 30 each year to  
5 ensure protection of the lake's recreation values.

6           Thank you for affording me this opportunity to be  
7 heard on this issue.

8 Q           Just one additional question, Mr. Lowery. Could you  
9 briefly compare the recreational facilities at Silver Lake to  
10 those at Caples Lake?

11 A           Yes. Silver Lake is more intensively developed than  
12 Caples Lake and has approximately, I would say, five to six  
13 times the overnight capacity of Caples.

14 Q           Thank you.

15           Our last witness, then, is Ms. Moreno. Ms. Moreno,  
16 you had prepared Amador Exhibit 95-3. Do you want to briefly  
17 go through your testimony?

18           MS. MORENO: A Thank you. I am a member of Amador  
19 County Board of Supervisors. I am speaking today on behalf  
20 of Amador County and the Board of Supervisors.

21           We continue to be opposed to the issuance of any  
22 permit to El Dorado on the water in Silver Lake unless the  
23 Board imposes restrictions on El Dorado's use of that water  
24 to guarantee that, in addition to filling the lakes in the

1 spring, there are no releases or withdrawals from the lakes  
2 other than the required fish releases until after the end of  
3 the recreational season, after Labor Day.

4 Amador County also submits that the proposed  
5 prospective acquisition of PG&E's FERC license or FERC  
6 Project 184 by EID would have a substantial, adverse, and  
7 powerful impact on Silver Lake for it would change the  
8 primary goal of the operating entity from that of power  
9 generation to that of making water available for consumptive  
10 use.

11 It is imperative that the Board impose conditions on  
12 any permit to protect Silver Lake's recreational land  
13 aesthetic values. We also request that the Board approve  
14 Amador's own application 30218 and petition for assignment of  
15 State Filing 5648 Folder 10 to appropriate 8,740 acre-feet,  
16 the capacity of Silver Lake for recreational fish and  
17 wildlife and fire protection purposes.

18 We would like to make it clear our filings are not  
19 designed to prevent the use of water stored in Silver Lake  
20 after it is released in the fall, but only to ensure that the  
21 water is kept in the lake until the end of summer, after  
22 Labor Day, and that there will be no new or increased  
23 releases during the recreational season.

24 MR. GALLERY: Thank you, Ms. Moreno. That completes



1 would prevail upon PG&E with money to release water from  
2 Silver Lake earlier than PG&E would have done for its own  
3 power production absent these water right applications?

4 MR. SCHULER: A I have no evidence that that would  
5 take place.

6 MR. GALLERY: Mr. Somach, did you say evidence that  
7 that could happen absent these water applications? Is that  
8 your question?

9 MR. SOMACH: Q With these water rights applications,  
10 is your answer still the same? Did you understand the  
11 question?

12 A With or without, I am not sure what the difference  
13 would be. With the application -- either way we have no  
14 evidence that that might occur.

15 Q What is your application and petition for, not in  
16 terms of quantity of water, but what purpose does it serve?

17 A It is to hold the levels in the lake up through the  
18 summer.

19 Q Is it your intention to take water out of the lake?

20 A No.

21 Q Is it your intention to operate the project?

22 A No.

23 Q Is all the water that you are attempting to  
24 appropriate, to remain in the lake?

1 A Yes.

2 Q What change in operations are you proposing will take  
3 place the day after your permit is granted than existed the  
4 day before?

5 A No specific changes. We would expect it to be  
6 operated as it has been in the past.

7 Q Do you have any operational agreements with PG&E?

8 A No.

9 Q And actually, I guess you just indicated this, but  
10 with respect to release schedules, you are proposing  
11 basically the historic release schedules of PG&E; is that  
12 correct?

13 A Yes.

14 MR. STUBCHAER: Mr. Somach, just to clarify one  
15 question, you said all the water they're trying to  
16 appropriate is to remain in the lake and the answer was yes,  
17 not to remain in the lake indefinitely, as I understand it.

18 MR. SOMACH: But the purpose of their application is  
19 to have it remain in the lake.

20 MR. STUBCHAER: For a period of time?

21 MR. SOMACH: From my perspective, it makes no  
22 difference if what they are attempting to do is to apply for  
23 water for instream purposes.

24 MR. STUBCHAER: I just thought it sounded like it was

1 going to be there forever.

2 MR. SOMACH: No, the second question was what  
3 happens, and they wanted to release under the historic PG&E  
4 pattern; is that correct?

5 A That's correct.

6 Q With respect to the statement on page 2, which I  
7 think refers to the PG&E historic operations, do you see  
8 that? It's the first full paragraph that's not a quotation.

9 A Yes.

10 Q Which is the practice that PG&E has followed  
11 historically. How do PG&E's historic operations differ from  
12 what was presented by El Dorado?

13 A What did El Dorado present?

14 Q Does Amador have anything different in terms of  
15 evidence of historic operations than what was provided in the  
16 El Dorado exhibits?

17 A I don't believe so.

18 Q The same operation that was presented by El Dorado;  
19 is that correct?

20 A Yes.

21 Q And has Amador County ever protested PG&E's  
22 operations?

23 A Not that I am aware of.

24 Q Ms. Moreno, is it the Board of Supervisors' intention

1 to protest PG&E's operations?

2 MS. MORENO: A The Board of Supervisors has not  
3 discussed that issue, however, I, as an individual Board  
4 member would certainly want to protest any change in lake  
5 levels that affected the lake and the economy of Amador  
6 County, should that occur at a future date.

7 Q But you have no quibble with the historic operations;  
8 is that correct?

9 A Historic operations, I am not familiar with. The  
10 results of the historic operations, I believe that the Board  
11 has found them to be adequate in the past.

12 Q Ms. Moreno, if I could for a moment look at your  
13 testimony, I believe that on the second page, you did read  
14 this into the record just a moment ago, you said, and I'm  
15 looking at the last sentences, the last sentence, in fact,  
16 where you indicate that Amador's filings are intended for the  
17 purpose of making sure there will be no new or increased  
18 releases during the recreational season; is that correct?

19 A That is correct.

20 Q And when you say no new or increased releases, what  
21 is the basis from which you are talking?

22 A Other than have been previously authorized or  
23 previously occurred during the history as we know it.

24 Q And are you familiar with any evidence of what



1 leak, and the fish release.

2 Q It anticipates, then, that a dam is in place and  
3 operating; is that correct?

4 A Correct.

5 Q And that is the level that you are talking about; is  
6 that correct?

7 A Correct.

8 Q I note on page 5 of your testimony, you talk about  
9 trade-offs for Silver Lake and authorizing reduced lake  
10 levels beyond those currently occurring. What are you  
11 talking about when you talk about those levels that are  
12 currently occurring? Are those the historic lake levels that  
13 resulted from PG&E's operations?

14 A About where on the page are you, Mr. Somach?

15 Q The last paragraph. It is actually the last three  
16 lines on that paragraph.

17 A The one that begins "in short"?

18 Q Yes.

19 Do you see where you say beyond those currently  
20 occurring?

21 A Yes.

22 Q I'm just trying to figure out the baseline which you  
23 are referring to.

24 A Are those currently occurring, what I'm referring to,

1 are the levels that result from the fish release and the  
2 leakage release.

3 Q And also from the operation of the hydroelectric  
4 facility?

5 A There are no releases -- my information has been that  
6 there are no power releases made prior to Labor Day.

7 Q But in terms of historic operations, you do concur  
8 that the project is operated by PG&E; is that correct?

9 A Yes, it has been.

10 Q And that the decision to make releases or not make  
11 releases is, in fact, an operational decision; is that  
12 correct?

13 A Yes, that is correct, under the FERC license.

14 Q Under the FERC license, fair enough. So, when you  
15 talk about lake levels beyond those currently occurring, you  
16 are talking about the historic lake levels that occur because  
17 of the historic operations of PG&E; is that correct?

18 A Yes, that's correct.

19 Q And are you familiar with any historic operations of  
20 PG&E beyond those which were submitted by El Dorado in its  
21 testimony?

22 A I am not clear on what you are asking.

23 Q Are you aware, are you familiar with the exhibits  
24 that were presented by El Dorado?

1 A I don't know what exhibits you are referring to.

2 Q How about Exhibit 78, the Hannaford exhibit?

3 A No, I am not -- I have not read that.

4 Q You have not, however, submitted any evidence of  
5 historic PG&E operations; is that correct?

6 A No, I have not.

7 MR. GALLERY: Excuse me, Mr. Somach, Mr. Lowery has  
8 submitted testimony here that he has been working with  
9 respect to the lake for several years, so he has presented  
10 evidence to that effect.

11 MR. SOMACH: Okay, fair enough.

12 Q Mr. Lowery, do you know whether or not the Forest  
13 Service sought to purchase or involve itself in the purchase  
14 of the El Dorado Water Project?

15 MR. LOWERY: A I am not aware that the Forest  
16 Service ever did that.

17 Q In your years with the Forest Service, did you become  
18 familiar with the operation of ECPA, the Electric Consumers  
19 Protection Act?

20 A I'm not familiar with that, I'm not familiar with  
21 that name, at least. Can you tell me what it provides for?

22 Q It is an act that provides for an official role for  
23 land agencies like the Forest Service with respect to  
24 projects that are the subject of licensing or relicensing

1 where the projects are within the boundaries of the agency's  
2 jurisdiction?

3 A           Okay. I'm not familiar with that particular acronym.

4 Q           Now, I was uncertain about some testimony you gave  
5 with respect to Silver versus Caples Lake. Does the  
6 statement that you made depict a preference for one lake  
7 versus the other in terms of operational decisions that could  
8 be made with respect to those two lakes?

9 A           That was not my intent.

10 Q           Then, other than articulating a factual assertion as  
11 to relative use, was there any other intent in that  
12 statement?

13 A           No. My intent was to respond to the question which  
14 was the level of use and development at each of the two  
15 facilities.

16           MR. SOMACH: I have no further questions.

17           MR. STUBCHAER: Thank you, Mr. Somach. Mr. Turner.

18           MR. TURNER: Thank you, Mr. Stubchaer. I have just a  
19 couple of questions since Mr. Somach asked most of what I was  
20 interested in, and I would present these to any member of the  
21 panel.

22

**CROSS-EXAMINATION**

23 BY MR. TURNER:

24 Q           I note in both the written testimony and in the

1 Board's Notice of the Applications, that one of the purposes  
2 of the use that apparently was specified in the applications  
3 was fire protection. Could you explain to me how that  
4 purpose of use would be implemented by leaving water in  
5 Silver Lake?

6 MR. SCHULER: A Oftentimes the availability of water  
7 is a source of water for fire protection for pumpers, for  
8 fire trucks to be able to just drop the suction lines  
9 directly into the lake as long as the lake is up near the  
10 shoreline where it can be accessed with equipment.

11 Q So, you are talking about a rediversion of water  
12 diverted to storage; correct, and is that included in your  
13 application?

14 A I'm not sure I follow rediversion by taking it out  
15 for fire protection.

16 Q You want to put it in the lake and now you say you  
17 want to be able to take some of it out after you put it  
18 there, for fire protection.

19 A Helicopters that drop buckets in the lake to put out  
20 fires. I don't know that that would be considered a  
21 rediversion. Maybe it is technically.

22 Q Have you done any kind of estimate as to quantities  
23 of water that would be so diverted?

24 A No, I haven't.

1 Q Now, I want to make sure I fully understand this. If  
2 the permit you are requesting is granted, you will have no  
3 control over the manner in which water is released from  
4 Silver Lake; correct?

5 A That is correct.

6 Q So, the water which would simply be released by PG&E  
7 or EID, whoever is holding the FERC license, will be in  
8 accordance with that license?

9 A Accordance with the license, yes.

10 MR. TURNER: I have no further questions.

11 MR. STUBCHAER: All right. Mr. Baiocchi, I didn't  
12 see your hand.

13 MR. BAIOCCHI: I didn't raise it, but something just  
14 popped up, and I want to see if I can get Mr. Somach's  
15 attention.

16 MR. STUBCHAER: He is not under cross-examination.

17 **CROSS-EXAMINATION**

18 BY MR. BAIOCCHI:

19 Q Now, on the Staff Summary for Hearing, Attachment 2  
20 on the Hearing Notice, under D, Alpine, Mr. Schuler, once you  
21 get to it --

22 MR. GALLERY: Five pages from the back, at the top  
23 it says Staff Summary for Hearing.

24 MR. BAIOCCHI: Q It appears that Alpine has a

1 priority date of July 30, 1927, even though the application  
2 was recently filed. Now, the question is, and also under A,  
3 El Dorado, they have a priority date of July 30, the same  
4 date, 1927, under number 2. Now, based on your expertise,  
5 would you believe that Alpine's application supersedes El  
6 Dorado on that appropriation of water from Silver Lake?

7 MR. GALLERY: Mr. Baiocchi, we are Amador County.  
8 Did you mean to ask about Alpine County?

9 MR. BAIOCCHI: I'm sorry. I'm asking questions about  
10 Alpine, I realize you are Amador County.

11 A I'm not sure I can answer that  
12 question. The State filings, I think, are there for the  
13 counties of origin, if that's what you are referring to, the  
14 5645 State filings.

15 Q Right.

16 A The 1927 priority.

17 The question is who would have priority?

18 A Alpine or Amador, you mean?

19 Q El Dorado or Alpine.

20 A El Dorado and Amador, in our case, or Alpine, I don't  
21 know.

22 MR. BAIOCCHI: Thank you.

23 MR. VOLKER: Mr. Stubchaer, I neglected to put my  
24 hand up, but I have a very short cross.

1 MR. STUBCHAER: All right.

2 **CROSS-EXAMINATION**

3 BY MR. VOLKER:

4 Q Mr. Lowery, you testified that in your estimation,  
5 Silver Lake is used more intensively than Caples Lake; is  
6 that correct?

7 MR. LOWERY: A Yes, it is. It is developed more  
8 intensively than Caples Lake is.

9 Q In your estimation, is there a potential for future  
10 additional development of Caples Lake for recreational  
11 purposes?

12 A Yes, some.

13 Q You didn't mean to suggest in your testimony that  
14 Caples Lake should be drawn down more than Silver Lake, did  
15 you?

16 A I don't believe that would be the intent of the  
17 question.

18 Q It wasn't the intent of the answer either?

19 A No, it was not.

20 MR. VOLKER: Thank you.

21 MR. STUBCHAER: Staff.

22 MR. TAYLOR: No questions.

23 MR. GALLERY: Just a couple on redirect.

24 **REDIRECT EXAMINATION**

1 BY MR. GALLERY:

2 Q Mr. Lowery, you testified on cross-examination that  
3 you were satisfied with historic operation. You are familiar  
4 with Exhibit S in the PG&E FERC license, are you?

5 MR. LOWERY: A Yes, I am.

6 Q And with the provision in there that Silver Lake is  
7 not to be drawn down during the summer, that it is to be kept  
8 as full as possible during the summer months, subject to the  
9 leakage and to the fish releases?

10 A Yes.

11 Q So, would you say you are satisfied with the historic  
12 operation, it is your understanding that there are no  
13 releases from Silver Lake during the summer; is that correct?

14 A That is correct, no release other than the leakage  
15 and the fish release.

16 Q Ms. Moreno, if I were to ask those same questions,  
17 would your answers be the same?

18 MS. MORENO: Yes, they would.

19 Q And Mr. Schuler, the same question, would your answer  
20 be the same?

21 MR. SCHULER: A Yes, it would.

22 MR. GALLERY: That's all.

23 MR. STUBCHAER: Any recross? Seeing none, next is  
24 exhibits.



1 MS. WINTER: A Carol Winter.

2 Q And can you tell us, is Exhibit KW-12 a true and  
3 correct copy of your testimony?

4 A Yes.

5 Q Would you please summarize that testimony for the  
6 participants?

7 A I have lived in Kirkwood and worked there for 23  
8 years. Six years were working for Kirkwood Corporation and  
9 then 16 years for Kirkwood Accommodations, which is a  
10 corporation that I own for property management and real  
11 estate.

12 I have served on the Alpine County Chamber of  
13 Commerce, on the Planning Committee, Architectural Committee,  
14 several boards of directors, and the Fish and Game Commission  
15 for Alpine County.

16 The snow levels have a direct impact on my business,  
17 which has many times been reduced to less than half during  
18 the drought years.

19 If the Board of Directors grants Kirkwood some water  
20 rights, then we can have the stability that we need even in  
21 the low-snow year. I think it is essential for an already  
22 developed community for survival.

23 Q Thank you. Ms. Winters, is that all you have for the  
24 moment?

1 A Yes.

2 MR. LENNIHAN: Thank you.

3 MR. STUBCHAER: Any cross-examination of this  
4 witness? Seeing none. We will save the exhibit until  
5 tomorrow?

6 MS. LENNIHAN: Let me move all the exhibits in at the  
7 same time.

8 MR. STUBCHAER: That's a lot of miles per word.

9 A Yes.

10 MR. STUBCHAER: I am glad we were able to get you in  
11 today.

12 MR. BIRMINGHAM: I would move this witness be given  
13 some kind of award for her brevity.

14 MR. STUBCHAER: I think that's a good suggestion.  
15 Thank you very much.

16 A A night in the Hilton?

17 MS. LENNIHAN: We accept.

18 MR. STUBCHAER: All right. Well, it is too bad we  
19 didn't keep the Forest Service witness around. Is there  
20 anyone who wants to go today with a short presentation?

21 MR. BIRMINGHAM: We would like to go today with a  
22 short presentation.

23 MR. STUBCHAER: All right, you are on. Has your  
24 witness taken the pledge?

1 MR. BIRMINGHAM: He has.

2 /////

3 /////

4

5

**DIRECT EXAMINATION**

6 BY MR. BIRMINGHAM:

7 Q Mr. Ottemoeller, would you please state your full  
8 name?

9 MR. OTTEMOELLER: A Stephen Ottemoeller.

10 Q Mr. Ottemoeller, by whom are you employed?

11 A Westlands Water District.

12 Q What is your position there?

13 A Director of Resources.

14 Q Now, a copy of your resume was submitted with the  
15 Westlands Water District Notice of Intent to Appear; is that  
16 correct?

17 A Yes.

18 Q And Westlands Water District Exhibit 1, is that a  
19 copy of your testimony?

20 A Yes, it is.

21 Q Would you please summarize the testimony submitted as  
22 Westlands Water District Exhibit 1?

23 A Yes, Westlands is an agricultural water district on  
24 the west side of the San Joaquin Valley. We supply Central

1 Valley Project Water under contract with the Bureau of  
2 Reclamation to approximately 57,000 acres of irrigable land.  
3 We are entitled to receive up to 1 million 150 thousand acre-  
4 feet of water from the Bureau of Reclamation.

5           The water delivered by the Bureau is exported from  
6 the Sacramento-San Joaquin Delta after diversion under its  
7 water rights permits in other parts of the State.

8           In the most critically dry or below-normal years, the  
9 entire amount of the proposed diversion by El Dorado  
10 Irrigation District would result in a direct acre-foot per  
11 acre-foot impact on the Bureau's available Central Valley  
12 Project supplies.

13           If any of the water that is subject to these water  
14 rights applications is stored in Folsom at a time when water  
15 is being released from storage for flood control purposes, or  
16 when it is being released simply to meet minimum flows, the  
17 storage of that water would increase the impact of the  
18 diversion. Furthermore, if diversions are made from Folsom  
19 when releases of Central Valley Project water are in excess  
20 of natural inflow to the reservoir, the water is being  
21 withdrawn from storage, in effect.

22           The use of the reservoir to reregulate water is, in  
23 fact, storage. Any use of water that comes into the  
24 reservoir that the Bureau would otherwise have been able to

1 release as part of its obligations for instream flows, but  
2 cannot release because it is going to be reregulated and  
3 rediverted by another party, in effect, ultimately takes  
4 water out of the Bureau's supply.

5           The storage of water for even as much as one day can  
6 impact the amount of water that the Bureau had in storage,  
7 recognizing it is a small amount, but it does impact the use  
8 of that water.

9           Central Valley Project releases of water from Folsom  
10 to meet Delta water quality obligations and to support  
11 exports to meet its water obligations, which is a reduction  
12 in the amount of Central Valley Project water reaching the  
13 Delta will result in a reduction of exports by 70 to 80  
14 percent of the amount by which the flows into the Delta have  
15 been reduced.

16           This means, for example, that if 17,000 acre-feet of  
17 water is no longer available for release to the Delta by the  
18 Central Valley Project, exports will be reduced by from  
19 11,900 to 13,600 acre-feet.

20           As an agricultural water service contractor with the  
21 Central Valley Project, Westlands and other water service  
22 contractors south of the Delta are the first to be impacted  
23 by reduced CVP exports.

24           A reduction in exports of 11,900 acre-feet, for

1 example, will impact all of the agricultural water service  
2 contractors by that amount and would impact Westlands in  
3 particular approximately 7200 acre-feet which translates into  
4 a reduction in the planted acres of about 2670 acres.

5           Bearing in mind that in years when this reduction is  
6 most likely to occur is in the critically dry years, although  
7 there may be other supplies available to farmers in  
8 Westlands, those supplies would have been used anyway, so a  
9 reduction of that quantity almost necessarily results in  
10 reduced acreage because they have already used up their  
11 available supplies to make up for reductions. A reduction in  
12 production of 2670 acres equates to a loss of 4.4 million  
13 dollars of gross farm income based on the average gross value  
14 of jobs in Westlands, and an impact to the State economy of  
15 approximately 13.2 using the typical three times multiplier.

16           Because of the proximity of Folsom Reservoir to the  
17 Delta, CVP operators use releases from Folsom to fine-tune  
18 their water quality control operations, and if water is  
19 unavailable from Folsom, additional water must be released  
20 from other reservoirs farther north, typically Shasta or  
21 Trinity, to ensure compliance within stream flows and Delta  
22 water quality standards.

23 Because of the increased distance from the Delta, releases  
24 from Shasta or Trinity must be made three or four days sooner

1 than releases from Folsom in anticipation of Delta  
2 requirements, and there is a greater likelihood that the  
3 excess releases will not be recoverable at the pumps and  
4 water may be wasted as unnecessary outflow.

5           Use of water from Folsom Reservoir by the Central  
6 Valley Project to ensure compliance with Delta standards is  
7 important in light of the water rights process recently begun  
8 by the State Board to establish responsibility for mitigating  
9 impacts of all diversions on the Delta.

10           Since a new upstream diverter would not be part of  
11 any negotiations currently taking place regarding  
12 contributions to pay for Delta water quality protection, the  
13 impact on the Bay-Delta of the new consumptive diversion must  
14 be considered by the Board when granting new diversion  
15 permits.

16           I need to note it is Westlands' policy not to  
17 challenge the priority created by the provisions of the Water  
18 Code pertaining to watershed or area of origin.

19           However, we believe that the information provided is  
20 relevant to the Board's consideration of potential  
21 environmental effects of El Dorado, and El Dorado and other  
22 applications.

23           In addition, your statute would protect the priority  
24 of a watershed or area where this water originates for water

1 reasonably required to adequately supply the beneficial needs  
2 of the watershed area and it did not create a right to use  
3 Central Valley Project facilities to store water. Therefore,  
4 absent a plan to construct new storage facilities or showing  
5 that El Dorado has entered into contract with the Bureau to  
6 store water in Folsom any right granted to El Dorado as a  
7 result of the pending application should be for direct  
8 diversion only.

9 MR. BIRMINGHAM: At this point, Mr. Stubchaer, at  
10 this point, to avoid the need for cross-examination by Ms.  
11 Lennihan, Westlands Water District will withdraw its protest  
12 of the application of Kirkwood Associates and then make Mr.  
13 Ottemoeller available for cross-examination by others.

14 MR. STUBCHAER: Who wishes to cross-examine this  
15 witness?

16 MR. SOMACH: I do, except I have this question:  
17 That is the only application and petition that the protest is  
18 against, and so having withdrawn, I guess we have an entity  
19 just kind of participating.

20 MR. BIRMINGHAM: This was an issue that was addressed  
21 previously, Mr. Stubchaer. There were two Notices that were  
22 sent out in relationship to this proceeding. The first was a  
23 Notice related to Kirkwood's application which we protested.  
24 The second Notice was a Notice of the hearing. And the

1 Notice for this hearing provided that if interested parties  
2 complied with the Water Board regulations concerning  
3 appearance of interested parties, that they would be  
4 permitted to appear, present testimony and participate in the  
5 hearings.

6 Westlands Water District, pursuant to 761(a) of the  
7 Board's regulations complied with the requirements under  
8 conditions to participate as an interested party, and I think  
9 that the hearing officer previously ruled that we were  
10 entitled to participate in these proceedings as an interested  
11 party.

12 That was in response to the Notice of this hearing.  
13 The protest that we filed was in response to the Notice of  
14 the application. So, there were actually two separate  
15 notices, and we responded to both and we are withdrawing one.

16 MR. STUBCHAER: Mr. Taylor.

17 MR. TAYLOR: Mr. Birmingham has accurately stated my  
18 recollection. Mr. Somach raised this same question earlier  
19 on in these proceedings, and it is my recollection that you  
20 ruled that Westlands had standing to participate as an  
21 interested party, viz-a-viz the El Dorado applications.

22 MR. STUBCHAER: All right. With that, Mr. Somach,  
23 just an observation as you are coming up. I notice that the  
24 protest machinery wears out as it gets closer to 5:00

1 o'clock.

2

**CROSS-EXAMINATION**

3 BY MR. SOMACH:

4 Q Mr. Ottemoeller, just so that the record is clear,  
5 you have not objected to the El Dorado application and  
6 petitions; is that accurate?

7 MR. OTTEMOELLER: A That's accurate.

8 Q Would you consider, Mr. Ottemoeller, El Dorado County  
9 being within the watershed tributary to Folsom Lake?

10 A That's my understanding, yes.

11 Q And in your testimony, you use the word "reduction:  
12 in terms of page 1, bottom of the page, any reduction in the  
13 amount of water available to the Central Valley Project from  
14 the American River under its water rights directly affects  
15 the water supply by the amount diverted, etc.

16 A Yes.

17 Q What do you mean by the word, "reduction", do you  
18 have any special meaning when you use that?

19 A I am not sure I understand the question, special  
20 meaning beyond the definition of the word "reduction". The  
21 Bureau diverts water that is available to it. If that water  
22 is reduced from what it normally is, then the statement  
23 stands.

24 Q So, you are using it in its ordinary dictionary

1 definitional way; is that correct?

2 A Yes.

3 Q Is it your view that if this permit is granted, it  
4 would allow El Dorado to reduce water from water that was  
5 otherwise appropriated to the Bureau of Reclamation?

6 A I am not sure I understand.

7 MR. BIRMINGHAM: Then I will object on the grounds --

8 MR. STUBCHAER: I didn't fully understand. Will you  
9 restate the question?

10 MR. SOMACH: Q The word "reduction" you use in this  
11 phraseology, you are articulating the view that what will be  
12 reduced is the amount of water available to the Bureau of  
13 Reclamation under its permits; is that correct?

14 A Yes.

15 Q Westlands rights, are they derivative of those of the  
16 Bureau of Reclamation?

17 A That is my understanding as a water service  
18 contractor, yes.

19 Q You have no separate water rights to the water that  
20 we are talking about other than what you have under contract  
21 with the Bureau of Reclamation?

22 A Not that I'm aware of.

23 Q Out of curiosity, that analysis you have done in  
24 terms of reduction, have you done an analysis which accounts

1 for accretions into the system after diversions by El Dorado?

2 A No, I was using the number provided by El Dorado in  
3 its application, amended application, as to the net diversion  
4 from the American River.

5 Q Okay, but you assumed that the net diversion of 1700  
6 acre-feet equaled the net loss to the system; is that  
7 correct?

8 A Yes. Since they said they were taking it from Folsom  
9 Reservoir, our assumption was that at Folsom Reservoir it was  
10 being diverted and there was nothing that happened between  
11 the reservoir and the point of diversion because the point of  
12 diversion is the reservoir.

13 Q Right, but did you account for any return flows from  
14 the areas tributary to Folsom Reservoir in the context of use  
15 of water within El Dorado --

16 MR. BIRMINGHAM: I am going to object on the grounds  
17 that it assumes facts not in evidence. I am not aware of any  
18 evidence that there will be return flow to Folsom Reservoir  
19 as a result of this project.

20 MR. SOMACH: Q I didn't ask that. I asked whether  
21 or not Mr. Ottemoeller assumed that.

22 A No, I did not.

23 Q Now, Mr. Ottemoeller, you described in some detail  
24 the Delta process and the impacts upon the Delta; is that

1 correct? I guess "some detail" is a relative term. You  
2 described the Delta process and the impacts of this process  
3 in that process; is that correct?

4 A I can't say that I'm really describing what happens  
5 in the Delta other than the net difference between the amount  
6 of water that goes in and the amount of water that can be  
7 exported on an average basis or typical basis.

8 Q Is it important to Westlands that regulatory agencies  
9 and other governmental entities that make commitments with  
10 respect to water supplies, that they rely upon meeting those  
11 commitments?

12 A Yes.

13 Q And adhere to those commitments?

14 A Yes.

15 Q Mr. Ottemoeller, have you ever read the Bureau of  
16 Reclamation permit for Folsom Reservoir?

17 A No, I have not.

18 Q Are you familiar with any of the terms and conditions  
19 in that permit?

20 A No, I am not.

21 Q Do you understand the Warren Act?

22 A I understand certain provisions that allow for the  
23 use of Federal facilities.

24 Q Do you understand any limitations in the use of the

1 Warren Act in the context of utilizing Federal facilities; in  
2 other words, does the Warren Act limit its scope to the  
3 utilization of surplus conveyance and storage space within  
4 Federal facilities?

5 A That is my understanding. I have not read the Act  
6 itself.

7 Q And if the operative word there is surplus and there  
8 if such a contract were granted to El Dorado, how would that  
9 adversely affect Westlands?

10 A If the use were truly such, that it was always  
11 surplus to the needs of the Bureau, it would not impact the  
12 Bureau's operation. Then, by definition, there would be no  
13 impact.

14 MR. SOMACH: I have no further questions, Mr.  
15 Stubchaer.

16 MR. STUBCHAER: Thank you. Anyone else? Mr.  
17 Birmingham.

18 MR. BIRMINGHAM: I have a few.

19 MR. STUBCHAER: On redirect?

20 MR. BIRMINGHAM: Yes.

21 /////

22 **REDIRECT EXAMINATION**

23 BY MR. BIRMINGHAM:

24 Q Mr. Ottemoeller, Mr. Somach asked you a question

1 concerning the service area of El Dorado Irrigation District  
2 and whether or not it was within the watershed of Folsom  
3 Reservoir. Have you reviewed any maps to determine from an  
4 engineering perspective whether or not all of the service  
5 area of El Dorado is within the watershed of Folsom  
6 Reservoir?

7 A No.

8 Q So, in fact, some portions of El Dorado Irrigation  
9 District Service Area may be outside the Folsom Reservoir  
10 watershed?

11 A As far as I know. I responded to my understanding.  
12 Maybe I should have said I don't know to the original  
13 question.

14 Q In fact, you don't know?

15 A That is correct.

16 Q Now, he also asked you a question about whether or  
17 not your analysis considered accretions.

18 Putting aside the question of return flows resulting  
19 from the proposed project, if there are accretions that  
20 supplement the flows into Folsom Reservoir as it is currently  
21 being operated, those accretions are available for  
22 appropriation by the Bureau; is that correct?

23 A That is my understanding of their operation, yes.

24

1 MR. BIRMINGHAM: I have no further questions.

2 MR. STUBCHAER: Does staff have any questions? All  
3 right. Do you want to offer your exhibits?

4 MR. BIRMINGHAM: Yes. First, I would like to ask  
5 that Mr. Ottemoeller's resume, which was attached to the  
6 Notice of Intent to Appear, be marked as Westland's Exhibit  
7 Number 2. And I would move for the admission of Westlands  
8 Water District 1 and Westlands Water District Exhibit 2.

9 MR. STUBCHAER: Any objection? Hearing none, they  
10 are accepted. Thank you.

11 Mr. Moss, are you ready to go today?

12 MR. MOSS: No, sir.

13 MR. STUBCHAER: All right. I don't see any other  
14 short ones on our list of parties to appear yet, so we will  
15 recess until 9:00 o'clock tomorrow morning.

16 (The hearing was recessed until October 31 at 9:00  
17 a.m.)

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